

VERBATIM ¹RECORD OF TRIAL ²

(and accompanying papers)

of

MANNING, Bradley E.

(Name: Last, First, Middle Initial)

Headquarters and
Headquarters Company,
United States Army Garrison
(Unit/Command Name)

(Social Security Number)

U.S. Army

(Branch of Service)

PFC/E-3

(Rank)

Fort Myer, VA 22211

(Station or Ship)

By

GENERALCOURT-MARTIALConvened by Commander

(Title of Convening Authority)

UNITED STATES ARMY MILITARY DISTRICT OF WASHINGTON

(Unit/Command of Convening Authority)

Tried at

Fort Meade, MD

(Place or Places of Trial)

on

see below

(Date or Dates of Trial)

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16 August 2013, and 19-21 August 2013.

¹ Insert "verbatim" or "summarized" as appropriate. (This form will be used by the Army and Navy for verbatim records of trial only.)

² See inside back cover for instructions as to preparation and arrangement.

~~SECRET~~

1 A.

2 Q.

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4 A. No.

5 Q.

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7 A.

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14 Q. Gotcha, sir. So, if that

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16 A.

17 Q. Yes, sir.

18 A. Well,

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20 Q. Sir, take your time.

21 MJ: Do you have some water there--okay.

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1 A.

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5 Q.

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9 A.

10 Q.

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12 A.

13 Q.

14 A. Yes.

15 Q. And, it could go all the way through

16 A. Right.

17 Q.

18 A. Right.

19 Q.

20 A. Yes.

21 Q. Were you aware of a

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3 A.

4 Q. Were you aware--So,

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7 A. No.

8 Q. You are aware that

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10 A. I am.

11 Q.

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17 A.

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20 Q.

21 A.

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Q.

A. Say that--read it again.

Q.

A.

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6 Q.

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8 A.

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1 Q. So, let us take a timeout from this discussion that we are
2 having right now and go back to the overarching line of questioning,
3 Mr. McCarl.

4 A. Okay.

5 Q.

6

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8 A.

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10

11 Q. But,

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13

14 A. Yeah, sure. Absolutely.

15 Q.

16

17 A.

18

19 Q. And, I guess

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1 A. That is a true statement but I do not know that it makes
2 any difference, but go ahead.

3 Q. But,

4

5 A.

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11 Q. But, it does make some?

12 A. Sure.

13 MJ:

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16 WIT: Well,

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MJ: Go ahead, Major Hurley, sorry to interrupt you.

ADC[MAJ HURLEY]: That is fine, ma'am, thank you.

Q. Sir,

A.

Q.

A. All right.

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~~SECRET~~

1 Q.

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4 A.

5 Q.

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12 A.

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15 Q. Well Sir, let me break it down then bit-by-bit, all right?

16 A. Okay.

17 Q. And again,

18

19 A. Yes.

20 Q.

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1 A. Again,

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4 Q. Now sir, another reasonable inference could be that--

5 . I am sort of getting back to
6 the original line of questioning.

7

8

9 A. Yes.

10 Q.

11 A. Yes.

12 Q. I have been known to mispronounce things.

13

14 A. Yeah, I would say it has a public profile.

15 Q. And, it has got that

16

17 A. Sure.

18 Q. And, one of those reasons would be

19

20 A. Yes.

21 Q. In its role,

22 a. Yes.

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1 Q. are

2

3 A. Yes.

4 Q. And, as unclassified report,

5

6 A. Yes.

7 Q. And, one of those reports is an

8

9 A. Yes.

10 Q. Do you have anything to do with the

11

12 A.

13

14 Q. We will

15

16 A. We will--me personally?

17 Q. Yes, sir.

18 A. Normally, I have not, but others do.

19

20 Q. Sir, would you recognize the report if you look at it?

21 A. Probably, but I do not----

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1 Q. And, I do have a couple of reports I am going to show you
2 in a second.

3 [Defense Exhibits GGG and HHH were marked for identification.]

4 MJ: Government, have you received those in discovery?

5 TC[MAJ FEIN]: We do not think so, ma'am. We are just looking
6 at real quick to see if it is the first time we have seen it.

7 MJ: Why not?

8 ADC[MAJ HURLEY]: Ma'am, when we understood the breadth of Mr.
9 McCarl's opinion today, we looked online to see if--what JIEDDO,
10 anything they had published with respect to these

11

12 MJ: All right, why did not you give it to the government before
13 you begin your cross-examination?

14 ADC[MAJ HURLEY]: Ma'am, I apologize for that. I should have.

15 MJ: Because it is causing some delay.

16 ADC[MAJ HURLEY]: Yes, ma'am. This will not happen again.

17 MJ: Government, do you need a recess?

18 TC[MAJ FEIN]: May we have a moment, Your Honor?

19 MJ: Yes.

20 [Pause]

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1 TC[MAJ FEIN]: Ma'am, if possible, maybe a recess in place just
2 to make a copy and then after cross-examination we will probably ask
3 for a recess to actually go through it just so we can follow along.

4 MJ: That is fine.

5 TC[MAJ FEIN]: May I have a brief in-place recess?

6 MJ: Court is in recess in place.

7 [Pause]

8 MJ: All right, the recess is not in-place. Please let me know
9 when you are ready to go.

10 [The court-martial recessed at 1233, 7 August 2013.]

11 [The court-martial was called to order at 1241, 7 August 2013.]

12 MJ: Court is called to order.

13 Let the record reflect all parties present when Court last
14 recessed are again present in court. The witness is on the witness
15 stand.

16 Are we ready to proceed?

17 ADC[MAJ HURLEY]: Yes, ma'am.

18 MJ: Go ahead.

19 ADC[MAJ HURLEY]: Ma'am, first before I recommence the cross-
20 examination I would like to say I apologize for the delay. It is the
21 position of the defense that this information is not discoverable,
22 that we are using it under the auspices of 608(c). But, even----

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1 MJ: So, 608(c) evidence is not discoverable?

2 ADC[MAJ HURLEY]: Even then, ma'am--well, ma'am, it is the
3 position of the defense that it is not. But, even then----

4 MJ: Under what authority is that?

5 [Pause]

6 MJ: Well, I disagree.

7 ADC[MAJ HURLEY]: Yes, ma'am.

8 MJ: So, from now on please make it available in discovery.

9 ADC[MAJ HURLEY]: Yes, ma'am.

10 **CROSS-EXAMINATION**

11 **Questions by the assistant defense counsel [MAJ HURLEY]:**

12 Q. So, sir, I was--May I approach, Your Honor?

13 MJ: Yes.

14 ADC[MAJ HURLEY]: I am handing the witness what has been marked
15 as Defense Exhibit HHH for identification.

16 Q. Sir, take a second and when you are done just briefly
17 skimming that document, if you would look up at me.

18 [The witness did as directed]

19 Q. Sir, just let me interrupt you, does that look like the

20

21 A. It does.

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1 Q. And, you know that because that is the general format of
2 fiscal year reports?

3 A. Yes.

4 Q. Sir, if I could direct your attention to page 14, I believe
5 it is in the upper--and, if I may take a back from you just to make
6 sure I get it right. Can I take this back from you? [Pause] I am
7 handing Defense Exhibit HHH for identification back to the witness.
8 Sir, in the upper right-hand corner does it mention
9

10 A.

11 Q.

12

13 A.

14 Q. Yes, sir.

15 MJ: Excuse me, I did not hear that.

16 MJ:

17 ADC[MAJ HURLEY]:

18 MJ:

19 Q. I am retrieving from the witness Defense Exhibit HHH for
20 identification. Sir,

21 A. I am not personally involved with that particular aspect of
22 it, so the answer is I do not deal with that. No.

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1 Q. Do you understand, generally, its function?

2 A.

3 ADC[MAJ HURLEY]: Ma'am, may I approach?

4 MJ: Yes.

5 ADC[MAJ HURLEY]: I am returning to the witness Defense Exhibit
6 HHH for identification.

7 Q.

8 Mr, McCarl?

9 [The witness did as directed.]

10 MJ: Is that on the same page?

11 ADC[MAJ HURLEY]: Yes. Yes, ma'am.

12 WIT: Yes, I see it.

13 ADC[MAJ HURLEY]: I am retrieving from the witness Defense
14 Exhibit HHH for identification.

15 Q.

16

17 A. I do. In that report, I do.

18 Q. Right, just based on what you have seen?

19 A. Right.

20 Q.

21

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3 A.

4 Q.

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6 A. Yes.

7 Q.

8 A. That is correct.

9 Q.

10

11

12 A. Yes.

13 Q. Right?

14 A. That is correct.

15 Q. In,

16 A. Yes.

17 Q. And sir,

18 A. I believe that is what it says, yes.

19 Q. And,

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1 A. I have confidence that it was provided to the DoD as part
2 of--as an unclassified FOUO. I do not know beyond that what it is.
3 And just to explain,

5 So, I am telling you, I
6 believe--I am familiar with the report. I know of its existence but
7 I am not intimate with it.

8 Q. And, and
9 using your vast military experience, common sense, and knowledge of
10 the ways of the world, when would that have been released if

12 A. It should have been

13 Q. And, fiscal years end on what date, sir?

14 A. Well, it would have been the

15 Q. , as a matter fact, right, sir?

16 A. Right.

17 Q. I am handing the witness what has been marked as Defense
18 Exhibit GGG for identification. Sir,

20 A. Yes.

21 MJ: Is this a different report?

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1 ADC[MAJ HURLEY]: Yes, ma'am. It is Defense Exhibit GGG. This
2 is a report for--well, let me get that that information from the
3 witness.

4 Q. And, this is for--it appears to be for fiscal year 2010?

5 A. Yes.

6 Q. Sir, would you just take a quick look at that report to
7 verify that it contains the information normally included in
8

9 [The witness did as directed.]

10 A. Yes.

11 Q.

12

13

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16

17 A. Right.

18 Q.

19 A Right.

20 Q. And again,

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1 A. That is correct, I am familiar with it but not an

2

3 Q. So, independent of that report,

4

5 A. I am.

6 Q. Does--in your mind, does what is in the report accurately,
7 if in an unclassified way,

8 A. It does.

9 Q. Thanks. I am retrieving from the witness Defense Exhibit
10 GGG that has been marked for identification.

11

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15 A.

16 Q.

17 MJ: Said that once again.

18 ADC[MAJ HURLEY]: Yes, ma'am.

19 Q.

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1 A. Yes.

2 Q. And, in what way would it help them?

3 A. Well,

4

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6 Q. But, it does describe the general purpose of the system?

7 A. It does.

8 Q. And,

9

10 A.

11 Q.

12

13 A.

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1 Q.

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5 A. Say that again.

6 Q. Yeah, it was a convoluted question, I apologize. You are

7 in the IED business?

8 A. Right.

9 Q. Wearing your red hat----

10 A. Right.

11 Q.

12

13 A. Right.

14 Q.

15

16

17 A.

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19 Q.

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21 A.

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1 Q.

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5 A. Yeah, I agree.

6 Q. And sir, is there a process, and this goes to a lot of your
7 experience but also your personal experiences at JIEDDO. Is there a
8 process through which potentially public statements are vetted, and
9 by potentially public statements let me dial you in a little but more
10 on that, sir; potentially public statements about what JIEDDO is
11 doing? Is there a process through which they are vetted?

12 A. There is a strategic--STRATCOM office at JIEDDO who is
13 responsible for all of those public releases.

14 Q. To your knowledge, is permission required before you would
15 engage in an on the record conversation with a reporter about IED
16 capabilities?

17 A. An on the record--yeah, I think you would have to clear
18 that with STRATCOM.

19 Q. You would have to clear the event itself, that you are
20 actually going to talk to a reporter, right?

21 A. Yes.

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1 Q. And, you would also be advised to clear the subject matter
2 of what you are going to talk to the reporter about?

3 A. Yes.

4 Q. So, you would have confidence that if a person is quoted on
5 the record by a reporter that that has been cleared by JIEDDO?

6 A. Well, if the system is in place and everybody followed it,
7 yeah, sure. The answer is yes.

8 Q. Sir, do you know who Colonel Dick Larry is?

9 A. I do not know Colonel Larry.

10 Q. All right, sir, than what I will do is again just like
11 before I will go through some information and you tell me whether or
12 not you agree with what is relayed, in your status as an expert, all
13 right?

14 A. All right.

15 Q.

16

17

18 A.

19 Q.

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21

22 A. No.

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- 1 Q. Because he has the bureaucracy that you talked about with
2 Captain Overgaard on direct, right?
- 3 A. It is a different bureaucracy, but he has one.
- 4 Q. But you----
- 5 A. It is far more streamlined than ours is, that is the point.
- 6 Q. And much more flexible in a way, right?
- 7 A. Still has the same kind of
8 in a different form.
- 9 Q. You would agree that in your status at JIEDDO,
10
- 11 A. Yes.
- 12 Q. And,
13
- 14 A. Right.
- 15 Q. JIEDDO has got to think through that problem set, right?
- 16 A. Right.
- 17 Q. Just like any Army person would do when prudently planning?
- 18 A. Right.
- 19 Q. And, not only does it have to think through the problem
20 set, action, counteraction, reaction, it will be advisable for JIEDDO
21 to push it all the way to its logical limits?
- 22 A. If you can see there, yes.

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1 Q. Right, the logical limits. So, it would be advisable to
2 think, if you could think, three steps ahead?

3 A. Yeah.

4 Q. If it was possible?

5 A. Yeah.

6 Q. And, I am going to direct you to a specific time.

7 the next series of questions are focused in
8 that time. All right, sir?

9 A. Okay.

10 Q. Would you agree,
11

12 A.

13 Q.

14 A.

15 Q.

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20 A.

21 Q. So sir,
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1 A. Right.

2 Q. And, that this has been your business the entire time, that
3 is dealing with the threat analysis for IEDs?

4 A. Yes.

5 Q. And, you did that in Iraq--or you do that for Iraq?

6 A. For Iraq and Afghanistan.

7 Q. And before that you were a career military intelligence
8 officer?

9 A. And had substantial experience on active duty after
10 September 11th?

11 A. Yes.

12 Q. In fact, your whole adult life has been dedicated to
13 intelligence related activities?

14 A. Yes.

15 Q. And, that is both with the Department of the Army?

16 A. Yes.

17 Q. And the Department of Defense?

18 A. Correct.

19 Q. So, let's talk about the threat generally, with respect to
20 IEDs. JIEDDO was stood up in 2006?

21 A. Right.

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1 Q. Stood up in response to an acute need to develop IED TTPs
2 and address the IED threat--I can rephrase that question if it would
3 help.

4 A. It was stood up to deal with the IED threat, yes.

5 Q. Now, IEDs are, I guess by their very nature, improvised,
6 right?

7 A. Right.

8 Q.

9

10 A.

11 Q.

12 A.

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14

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18 Q. And, when comes to IED tactics as you just indicated in
19 your answer,

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21 A.

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1 Q. And, sir, that is the point I was getting at. So, there is
2 an evolution but at some point

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4 A.

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9 Q.

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12 A.

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15 Q.

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17 MJ: Say that question one more time

18 ADC[MAJ HURLEY]:

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20 A.

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~~SECRET~~

1 Q.

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4 A.

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14 Q.

15 A.

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17 Q.

18

19 A.

20 Q.

21 A.

22 Q.

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1 A. Correct.

2 Q.

3

4 A. Yes.

5 Q.

6 A. Right.

7 Q.

8

9 A. Yes.

10 Q.

11

12 A. Yes.

13 Q.

14

15 A. Yes.

16 Q.

17 A. Yes.

18 Q.

19 A. Yes.

20 Q.

21

22 A. Yes.

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1 Q. And this information--we will take a quick aside.
2 Generally as I understood your testimony from Captain Overgaard,

3
4 A. That is one level.

5 Q.

6 A.

7 Q.

8 A.

9 Q.

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12 A.

13

14 Q.

15

16

17

18 A.

19 Q.

20 A.

21 Q.

22 A.

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~~SECRET~~

1 Q.

2 A.

3 Q.

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5

6 A. Yes.

7 Q.

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9 A. Yes.

10 Q.

11 A. Generally speaking, that is correct.

12 Q.

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16 A.

17 Q.

18 A.

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Q.

A.

Q.

A. Yes.

Q. Sir, you talked about the organization of your team and I just wanted over that real quick.

A.

Q. So,

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1 A. A sister division that I draw upon to do our work.

2 Q. So ORSA, and I will just use that expression from now on,
3 ORSA is a sister division to you and not a part of your organization?

4 A. Correct.

5 Q. And, the other part of the organization to you talked about
6 with Captain Overgaard was

7 A. Right.

8 Q. But , they report to you?

9 A. They do.

10 Q. And then another part of the team was

11 A. Correct.

12 Q. And, reports to you?

13 A. Yes.

14 Q.

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18 A. Yes.

19 Q. What information did you consider?

20 A.

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Q.

A. Wasn't the question that was asked. The question that was asked was, here are a set of leaked documents. What do you think the possible loss as a result of these documents is?

Q. Well, sir, I guess I am having a hard time understanding. If the information is already out there than a loss from leaked documents would be less acute, right?

A. A----

Q. The--go ahead, sir.

A.

Q. And, you did not expand the search to see if that information had already been essentially published to the threat?

A. We did not look beyond the assigned set of documents.

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1 Q. So, you wouldn't know that there was--that
2 had been leaked --that that would
3 not be something that would--that wouldn't be information that made
4 it to you?

5 A. If it was not provided to us in the documents by CENTCOM,
6 then we did not--we were not examining that.

7 Q. And, you would not, likewise--and,
8

9 A.

10 Q.

11 A.

12 Q. And, what you have done in order to prepare for your
13 testimony
14

15 A.
16

17 So, that is why we look at it.

18 Q. So, that is information that you--the analysis was--
19 that is
20 information that you just already know because of your job?

21 A. It is--yeah, yes.

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1 Q.

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3 A.

4 Q.

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7 A.

8 Q.

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11 A.

12 Q.

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15 A.

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17 Q. Things just--with respect to that, they discontinued the
18 process that was already working?

19 A.

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3 Q. Sir, just for clarity,

4 A. It is a

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8 A. Yes, sir.

9 Q. Pardon me for a moment. [Pause] Sir,

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12 A.

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14 Q. And again, at the

15

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17 A.

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19 Q.

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21 A.

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1 Q. Sir, in your military experience, you are where that field
2 manuals are available on the Internet?

3 A. Yes.

4 Q. And, you are aware that there are improvise explosive
5 device defeat manuals available on the Internet?

6 A. Yes.

7 Q. And those improvised explosive defeat manuals are published
8 by the United States Army?

9 A. Well, it depends on which one you are referring to, but
10 yes, Department of Defense.

11 Q. Is FMI 3-34.119 Improvised Explosive Device Defeat, is that
12 publicly available?

13 A. I have to see the cover on it, I cannot recognize that
14 particular title on it.

15 Q. But, you would agree with the general idea that there are
16 several CID manuals published by the Department of Defense that are
17 available that are unclassified?

18 A. Yeah, there are and they are published and disseminated to
19 Soldiers.

20 Q. Sir, just one second. [Pause.] Sir, you are familiar with
21 the nature of the threat in both Iraq and Afghanistan?

22 A. Yes.

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1 Q. You would characterize the Afghans as--Afghanistan has a
2 literacy problem?

3 A. Yes.

4 Q. A severe literacy problem?

5 A. That is fair.

6 Q. The threat in Iraq was a little more sophisticated?

7 A. Yes, on one level anyway.

8 Q. What was that level?

9 A. Well,
10
11
12

13 Q. Thank you, sir. So sir, in your expertise, in this
14 situation you cannot identify a cause and effect, right,--and, let me
15 restate that. You cannot say the WikiLeaks disclosures caused 'X';
16 some specific thing--operational thing on the battlefield?

17 A. I have said all along that it was inferred and you know, it
18 is an assessment that we see, we believe, if we had to make the call
19 that is when we would call it. You are correct, I cannot say, "This
20 leak went to this guy and he did 'X'."

21 Q. It is an inference based on the data that you have?

22 A. That is correct.

SECRET

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1 Q. Sir, just one second. [Pause] Sir, finally, as you sit
2 here today, can you remember specific facts like, "This SIGACT
3 contained this information." Or, is it, as the time has passed that
4 you just recall themes and areas?

5 A. I can remember some of the SIGACTS, but as you know, there
6 were 111 of them--11 reports for Iraq and nearly 4000 for
7 Afghanistan, so I do not recall all of them. But, I can pick out
8 selected ones.

9 MJ: There were 111 reports?

10 WIT: 111,000.

11 Q. So, you can speak--
12
13
14

15 A. I cannot recall--I cannot recite the specific text of the
16 message. Again, my analysts were the ones that did the work and so I
17 have the summary of what that finding was. There are other ones
18 where I can--we can,
19 , I can talk to you about
20 those. But, that is not what you are asking me. I cannot recall
21 all--each and every one of those.

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1 Q. Thanks, sir. And, what you are operating off of were the
2 reports that were provided to you by your subordinates on your team?

3 A. The analysis that was done by my guys on this particular
4 thing and a review of that in which I ask them, you know, various
5 questions about their logic frame, where they went. That was it.

6 ADC[MAJ HURLEY]: Thanks Mr. McCarl.

7 Ma'am, I don't have any more questions.

8 MJ: Redirect?

9 TC[MAJ FEIN]: Ma'am, before redirect, a few things. Looking at
10 the time, ma'am, and these two documents and then also I think we
11 found them and we will discuss with the defense these articles that
12 were referenced. The United States would ask that we possibly go
13 into a lunch recess before redirect. It accomplishes two things.
14 One, it saves time. Defense can meet with the next witness so we can
15 stay on time for the public session. We can review these documents.
16 And then, with the permission of the Court, discuss just these
17 documents with the witness for redirect and then we come back on the
18 record either before 1500 to finish this redirect or start the open
19 session, go into the closed session with Mr. Pearson and finish with
20 Mr. McCarl then so we can save time. Or, we can do it now. I mean,
21 we could--if not, ma'am, then we would ask for a recess now for us to
22 go over this and then continue.

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1 MJ: No, I like the idea of the consolidated recess. So, you
2 want to go back to the record at 1500. What works better? Well, if
3 we have the open session, Mr. McCarl is going to stay and then finish
4 the closed session with----

5 TC[MAJ FEIN]: Well, if I could briefly talk with defense?

6 MJ: Yes.

7 TC[MAJ FEIN]: Thank you, Your Honor.

8 [The parties briefly conferred.]

9 MJ: If we are going to need 20 minutes to do closed sessions,
10 one is preferable to two.

11 TC[MAJ FEIN]: Ma'am, the United States proposes, and I
12 apologize to Mr. McCarl for this proposal, it is his time also, is
13 that we move into recess right now ma'am for an extended lunch recess
14 then come back at 1500 for the open session because that is when the
15 public is coming and the media; we do the open session with Mr.
16 Pearson then we move into a single closed session with Mr. Pearson and
17 then the rest of Mr. McCarl.

18 MJ: All right, any objection to that?

19 ADC[MAJ HURLEY]: No, ma'am.

20 MJ: All right, Mr. McCarl, once again, the Court also apologizes
21 for this use of your time and the recess in between. I think it is a

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1 viable procedure. It is there anything we need to address before we
2 recess the Court?

3 ADC[MAJ HURLEY]: No, ma'am.

4 [The witness was temporarily excused, duly warned, and withdrew from
5 the courtroom.]

6 MJ: Court is in recess.

7 [The court-martial recessed at 1325, 7 August 2013.]

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1 [The court-martial was called to order at 1505, 7 August 2013.]

2 MJ: Court's called to order. Major Fein?

3 TC[MAJ FEIN]: Yes, ma'am. Ma'am, this is an unclassified
4 session and all parties when the court last recessed are again
5 present with the following exception: Captain Overgaard is absent,
6 Captain von Elten is present. Also, the court security officer
7 completed his opening hearing checklist and it will be filed with the
8 Post-Trial Appellate papers.

9 MJ: All right. Before we call the witness, the court is
10 prepared to rule on the defense objections regarding Major General
11 Nagata and Colonel Chesnutt. On 7 August 2013, in accordance with
12 the procedures established and the court's ruling, Defense Motion for
13 Appropriate Relief under R.C.M. 1001(b)(4), the defense filed
14 fourteen objections to the testimony of Major General Nagata and
15 Colonel Chesnutt. The defense objections were from testimony given
16 in closed session and the substance of the objections is classified.
17 The government compiled a joint classified filing, including the
18 defense objections and the government responses to the objections.
19 The court's ruling on each objection is as follows -- and in the
20 ruling when I say evidence that includes testimony:

21 One, the statements are admissible as a hearsay exception
22 under M.R.E. 803(3).

23 Two, this evidence is directly related to and resulting

1 from the PFC Manning's offenses, it is admissible aggravation
2 evidence under R.C.M 1001(b) (4).

3 Three, for purposes of this ruling, PFC Manning's offenses
4 and the subsequent WikiLeaks releases are incident One. There are
5 two other incidents referenced by Major General Nagata, the testimony
6 at issue is directly related to and resulting from PFC Manning's
7 offenses from the time of the WikiLeaks releases until incident Two.
8 For that period, the testimony is proper aggravation evidence under
9 R.C.M. 1001(b) (4). Incidents Two and Three are intervening causes
10 that played a major role continuing the effects testified by Major
11 General Nagata for incident One. The effects might have been
12 temporary in duration but for the occurrences for incidents Two and
13 Three. The court will not consider the testimony for the period
14 following incident Two in accordance with M.R.E. 403.

15 Four, the ruling of Three above is the same for this
16 objection.

17 Five, the documents at issue were required after incident
18 Two, this evidence is not directly related to or resulting from PFC
19 Manning's offenses and is not admissible under R.C.M. 1001(b) (4).
20 The court will not consider this evidence.

21 Six and seven, the ruling in Three above is the same for
22 these objections.

1 Eight, this evidence is directly related to and resulting
2 from PFC Manning's offenses. It is admissible aggravation evidence
3 under R.C.M 1001(b) (4).

4 Nine, the statements at issue are not being offered for the
5 truth of the matter asserted. They are not hearsay and they are
6 admissible for the fact the statements that were made in the
7 purported cable at issue. The statements made are relevant to
8 explain the evidence in Eight above and are admissible evidence,
9 aggravation evidence under R.C.M. 1001(b) (4).

10 Ten, this evidence is directly related to and resulting
11 from PFC Manning's offenses. It's admissible aggravating evidence
12 under R.C.M. 1001(b) (4).

13 Eleven, the statements are admissible as hearsay exception
14 under M.R.E. 803(3).

15 Twelve, the documents at issue were required after incident
16 Two. This evidence is not directly related to or resulting from PFC
17 Manning's offenses and is not admissible under R.C.M. 1001(b) (4).
18 The court will not consider this evidence.

19 Thirteen, the evidence is directly related to and resulting
20 from PFC Manning's offenses. It is admissible aggravation evidence
21 under R.C.M. 1001(b) (4).

22 Fourteen, this evidence is directly related to and
23 resulting from PFC Manning's offenses. It is admissible aggravation

1 evidence under R.C.M. 1001(b)(4). M.R.E. 403 analysis: the probative
2 value of those portions of the testimony and evidence ruled
3 admissible as aggravation evidence under R.C.M. 1001(b)(4) is not
4 substantially outweighed by the danger of unfair prejudice under
5 Military Rule of Evidence 403. The court has limited the scope of
6 the testimony and the evidence to the periods directly related to or
7 resulting from PFC Manning's offenses. So ordered this 7th day of
8 August 2013.

9 Major Fein, if you would, remind me - the defense
10 objections and government responses that was filed is Appellate
11 Exhibit ----

12 TC[MAJ FEIN]: Your Honor, that's Appellate Exhibit 642.

13 MJ: All right. I will hand this to the court reporter. Is
14 there anything further with respect to those objections?

15 TC[MAJ FEIN]: No, ma'am.

16 ADC[MAJ HURLEY]: No, ma'am.

17 MJ: Anything we need to address before we call the witness?

18 TC[MAJ FEIN]: No, ma'am.

19 ADC[MAJ HURLEY]: Not from the defense, ma'am.

20 MJ: Please call the witness.

21 ATC[von ELTEN]: Your Honor, the United States calls Mr. Adam
22 Pearson.

1 ADAM PEARSON, civilian, was called as a witness for the prosecution,
2 was sworn, and testified as follows:

3 DIRECT EXAMINATION

4 Questions by the assistant trial counsel [Captain von Elten]:

5 Q. For the record, you're Mr. Adam Pearson of Sterling,
6 Virginia?

7 A. That's correct.

8 Q. Mr. Pearson, what is your military background?

9 A. Military background was, I was an E5 in the Navy when I got
10 out in 2002. I was an Arabic linguist.

11 Q. How long were you in the Navy?

12 A. Five and a half years. I was STOP LOSS after 9/11.

13 Q. How did you learn to speak Arabic?

14 A. I went to the Defense Language Institute in Monterey.

15 Q. How long were you at the Defense Language Institute?

16 A. Approximately 2 years.

17 Q. Did you study anything other than Arabic?

18 A. While I was there, no.

19 Q. Did you receive any certification in your language
20 abilities?

21 A. Yes. I was certified as proficient in the language and
22 then afterwards there's a follow-on 6 months course in San Antonio,
23 I'm sorry, in San Angelo, Texas where we did more of the intel side.

1 Q. And just for the record, what language were you certified
2 as proficient in?

3 A. The Arabic language, as well as I also tested in German and
4 French as well.

5 Q. And what were your certifications in those languages?

6 A. I was advanced proficient in German and proficient in
7 French.

8 Q. What was this additional training you completed after the
9 Defense Language Institute?

10 A. It was basically a course in signals intelligence.

11 Q. How long did it last?

12 A. About 6 months.

13 Q. What did it cover?

14 A. It covered mainly dealing with ground forces, just
15 basically battlefield talk and how different militaries use different
16 words to describe things. Just basically preparing us for our
17 regular tours that we'd be doing.

18 Q. Mr. Pearson, if any of my questions require a classified
19 response, please notify the court.

20 A. Absolutely.

21 Q. What did you do in the Navy after completing your language
22 training?

1 A. I was assigned to Ft. Gordon, Georgia and I was assigned to
2 an NSA unit there.

3 Q. And what, generally speaking, what did you do?

4 A. Basically we were -- I was a voice collector for -- against
5 the Iraqi military, in the late 90's, that were conducting operations
6 against coalition aircraft where they were trying to shoot down our
7 aircraft and our job was to basically monitor their methods for that
8 and then report on it.

9 Q. How long were you in that role?

10 A. About 3 years.

11 Q. What did you do after your service to the Navy?

12 A. After STOP LOSS, after about a 6 month stint with the STOP
13 LOSS, I took a job as a contractor with a government agency in the
14 D.C. area.

15 Q. What did you do in that position?

16 A. The first couple of years I was assigned to what's known as
17 the National Media Exploitation Center.

18 Q. What years were those?

19 A. It was 2002 to 2004.

20 Q. And what did you do at the National Media Exploitation
21 Center?

22 A. Well, when the troops would go out and they would collect,
23 I guess you could call it seized media from the battlefield, whether

1 that's a hard drive or pocket litter or what have you, our job was to
2 go through and analyze, translate just the materials that were found.

3 Q. Where did these materials originate?

4 A. At first it was mainly Afghanistan and then it included
5 Iraq after that.

6 Q. What was your job title?

7 A. When I was at NMEC, I was a team lead. I was a Arabic
8 linguist team lead.

9 Q. What did you do after NMEC?

10 A. After NMEC the sponsoring U.S. Government agency pulled us
11 out of there and I was placed in another office doing
12 counterterrorism.

13 Q. How long were you in that position?

14 A. About 2 or 3 years. We were in the field assisting with
15 some special ops units and other things that would probably be best
16 left for a closed session.

17 Q. Did that involve the Arabic language?

18 A. Yes, absolutely.

19 Q. Did you perform targeting analysis in that position?

20 A. Yes.

21 Q. What did you do after that?

22 A. After that I switched to another office within this agency
23 and I performed duties that deal with information operations.

1 Q. Did that involve online activities?

2 A. Yes. It was, we had a NASCENT [Phonetic] internet opposite
3 branch.

4 Q. And how long were you in that position?

5 A. Approximately 2 years.

6 Q. What was your next position?

7 A. Next position was working with the 902nd, 315th doing
8 counter-intelligence. It was basically counter-hacking. We were
9 looking at those who tried to break into DOD systems and we just
10 identify them and I was doing that in both German and Arabic.

11 Q. What organization were you working for then?

12 A. That was the 902nd.

13 Q. And how long?

14 A. About a year, approximately. It was kind of a far distance
15 from where I lived, so it was ----

16 Q. What did you do after that?

17 A. After that I worked for a startup company called WCG and
18 that had various roles. We had a contract within one of the
19 government agencies doing IO. We also had -- we were building
20 software applications to be used by Homeland Security and U.S. Border
21 Patrol. And then I also went on a, somewhat of a guest speakership
22 local tour with National Defense University, Westminster Institute,
23 University of Southern California. That was on a satellite

1 conference talking about internet radicalization and how the
2 adversaries use the internet.

3 Q. What was your job title at WCG?

4 A. I was the VP of Digital Media Strategies.

5 Q. You mentioned a few things. What kind of software
6 applications?

7 A. Basically software that you could send a message to
8 somebody and it plots it on a map right away. It was called Grid Me
9 Now. Another thing we worked on was a portal for the special forces
10 guys, one of the SEAL teams. And then other stuff that was -- dealt
11 with internet operations and that was with, the specific government
12 agency that -- we'll leave at that.

13 Q. Can you speak a little more about what your -- what you
14 lectured on?

15 A. Sure. Basically my expertise was being able to look at the
16 internet forums, the blogs, and obviously I speak Arabic so I was
17 able to read what the adversary was saying about the U.S. military,
18 about the U.S. in general. A lot of it dealt with -- I would have to
19 say just pure propaganda that really -- it was so bad that I remember
20 when Abu Ghraib story came out some of the fervent Jihadist actually
21 downplayed it because it wasn't as bad as what they were telling
22 people, which was the Americans drink baby blood and use -- use the
23 organs of Palestinians to sell to Jewish people in New York. I mean,

1 these are all things that I would come across. So, we're dealing
2 with a whole different ball of wax when it came to what they were
3 saying about us.

4 Q. Where were these forums and blogs?

5 A. Well there's -- I mean there's probably three hundred or so
6 Jihadist centric web sites. I think the main ones would probably be,
7 that we looked at the most, were asansar.com [Phonetic], alajihad.com
8 [Phonetic], ashemicone [Phonetic], alamada [Phonetic]. I mean, could
9 go on and on. There's a whole bunch of them.

10 Q. What specialized training have you received for network
11 exploitation?

12 A. Network exploitation, I'm certified as a certified ethical
13 hacker, which actually falls under a duty directive A570, I believe.

14 Q. When did you receive that certification?

15 A. This was roughly 2 and a half, 3 years ago.

16 Q. So roughly around 2011?

17 A. Yes, that's correct.

18 Q. What is a certified ethical hacker?

19 A. Well, what they do is they have a 60 hour boot camp and
20 they basically train you on how hackers do what they do, on how they
21 break into your systems. Whether that's via a vulnerable web app or
22 through network exploitation. If you have Adobe Software, something
23 that's not updated, there's ways that you can exploit that. And they

1 teach you the different methods. I had a background in this stemming
2 from work I had done a few years earlier and then I was able to
3 augment that with this type of training.

4 Q. Did you have to pass a test to be certified?

5 A. Yes, I did.

6 Q. Did you pass?

7 A. Yes, I did, yes.

8 Q. Let's talk a little bit about your most recent position at
9 JIEDDO.

10 A. Sure.

11 Q. What is JIEDDO?

12 A. JIEDDO is the Joint IED Defeat Organization. And I worked
13 at the COIC, which I'll explain in a second. JIEDDO is divided up
14 into three missions: One is attack the network; the other is defeat
15 the device; and the third is train the force.

16 I worked on the attack the network part of that. Now, what
17 that means is we're dealing specifically with an IED network. IED,
18 improvised explosive device. If you think of an IED network, you may
19 be thinking it's -- the network is a circuit board or something. In
20 actuality, to carry off a suicide bombing, what's called a VBIED,
21 which is a vehicle born IED, or various other types of IEDs, there's
22 a whole process to it. There's financing, there's recruitment,
23 there's the person that has to attain a car or whatever vehicle is

1 going to be used, the explosives, the blasting caps. There's a lot of
2 different material that's involved in this. Some, actually quite a
3 few of these TTPs which is tactics, techniques, and procedures, can
4 be found online. So one of my duties there was to find the stuff
5 online and to report on it.

6 ATC[von ELTEN]: That's all for the open session, Your Honor.

7 MJ: Do you have any open cross?

8 ADC[CPT TOOMAN]: No, ma'am, we don't.

9 MJ: So we'll be -- is there any need to have another open
10 session today?

11 ADC[CPT TOOMAN]: Not from the perspective of the defense,
12 ma'am.

13 TC[MAJ FEIN]: No, ma'am.

14 MJ: All right. Then we should advise the public and the
15 members of the gallery what time we'll expect to start in the
16 morning. Would you like to confer?

17 ADC[CPT TOOMAN]: Yes, ma'am.

18 TC[MAJ FEIN]: Yes, ma'am. One moment, please.

19 [There was a pause while the counsel conferred at their counsel
20 tables.]

21 TC[MAJ FEIN]: 0930 tomorrow, ma'am.

22 MJ: All right. Is that acceptable to the defense?

Pages 12241 through 12316 of this transcript are classified “SECRET”. This session (7 August 2013, Session 2) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

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8 [The court-martial was called to order at 1606, 7 August 2013.]

9 MJ: Court is called to order.

10 Let the record reflect all parties present in the Court
11 last recessed are again present in court. The witness is on the
12 witness stand.

13 Major Fein, this is a closed session, please describe it
14 for the record what is occurring.

15 TC [MAJ FEIN]: Yes, ma'am, this is a closed session classified
16 at the SECRET level. Present, other than the parties the Court is
17 reference, is the Court's paralegal, bailiff, court security officer,
18 members of the prosecution and defense teams and security. Also, the
19 court security officer completed a closed hearing checklist which
20 will be filed with the post-trial allied documents. Additionally,
21 Your Honor, during this last recess, and could be restated on the
22 open record, the government filed a unclassified and redacted version

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1 of Appellate Exhibit 642. It has been labeled--or marked as 642b and
2 then the classified one has been marked as 642a.

3 MJ: All right. And, that will be announced in the next open
4 session, right?

5 TC[MAJ FEIN]: Yes, ma'am.

6 MJ: Proceed.

7 ADAM PEARSON, civilian, already on the witness stand, was reminded of
8 his oath, and testified as follows:

9 DIRECT EXAMINATION

10 Questions by the assistant trial counsel [CPT von ELTEN]:

11 Q. You testified

12 A.

13

14 Q. And,

15 A.

16 Q.

17 A.

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21 Q.

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1 A.

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3 Q. What are some examples of those networks?

4 A.

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9 Q. What was your position at JIEDDO?

10 A. I was the cyber counter IED analysis team lead.

11 Q. What did you do in that position?

12 A.

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1 Q. Let's backup for a moment?

2 A. Sure.

3 Q.

4 A.

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12 Q. What did you do as a

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14 A. I basically made sure that everybody was following all the
15 protocols and then I trained the new people that we had on the team.

16 Q. What did you do for quality assurance?

17 A. I would review everything that would go into an RFS support
18 and just make sure it was accurate--that the analysis was sound.

19 That it answered the question that was being asked. And, I did them
20 myself as well, you know, as an active participant.

21 Q. What kind of analysis did you perform?

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1 A.

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8 Q.

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10 A.

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16 Q. What are some examples of the websites you visit?

17 A.

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1 MJ: What was the person's name?

2 WIT:

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8 MJ: Yes?

9 TC[MAJ FEIN]: Ma'am I am sorry to interrupt, if we could please

10 ask the witness to spell all of those for the court reporters.

11 WIT: Sure.

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15 Q.

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17 A.

18 Q.

19 A.

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22 Q.

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1 A.

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5 Q.

6 A.

7 Q. Thank you.

8 A.

9 Q.

10 A.

11 Q.

12 A.

13

14 Q.

15 A.

16 Q. Mr. Pearson, you just mentioned an RFS, can you please

17 explain what RFS is?

18 A. An RFS is a Request For Support. Other places may call it
19 an RFI, Request For Information. It is generally the same thing. At

20 . We had a different liaison
21 there from various agencies. So, what would happen was they would be
22 a request from a Combatant Commander downrange and that would come

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1 through a vetting process to where it was then divvied to the
2 appropriate team;

3

4

5 Q. After the request came down to your team, what happened
6 next?

7 A. I would take a look at it and then I would assign it to the
8 right person if it was something we could do.

9 Q. After the request was assigned to someone what would the
10 person do?

11 A.

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19 Q. You just mentioned a moment ago, "fusion center". What is
20 a fusion center?

21 A. Yes,

22

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6 Q. What would the person responding to the RFS do after
7 conducting research; how would it be memorialized?

8 A.
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1 Q.

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4 A.

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9 MJ:

10 WIT: Oh, a pink team is essentially a first look at a product to
11 say, "Okay, you are on track. Fix this." Then they would come back
12 two days later and there would be a red team and the red team would
13 say, "Okay, this needs to be perfect, so this is what is not perfect
14 on it." So, after the red team, when it would it would come back, it
15 should be ready to go. So it was just different layers to go
16 through.

17 Q. Where would this request for support be placed?

18 A. Oh, there is and RES tracker that was on our portal page.

19 Q. Who had access to it?

20 A. Everybody at the . I think
21 other people would have access to it as well downrange. I mean,

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3 Q. Let us talk a little bit about WikiLeaks and one particular
4 request for support.

5 Q. When did you first learn about WikiLeaks?

6 A. I first heard about it with the collateral murder video. I
7 remember seeing it on, I believe it was YouTube. And, it was a 17
8 minute version and I think, like most people, I was pretty disturbed
9 by it but with my background in information operations and video
10 editing, and stuff like this, I knew that it was missing something.
11 So, when I saw--I found the 39 minute version and I think I may be
12 one of the few people that sat there and watched everything all over
13 again right after that. And, I noticed some various things that were
14 missing from the 17 minute video in this. That is when I first heard
15 about it.

16 Q. We will talk about that in a moment. Did you ever conduct
17 any research related to WikiLeaks while you were at JIEDDO?

18 A. Yes.

19 Q. I am retrieving Prosecution Exhibit 203 for identification.
20 I am handing Prosecution Exhibit 203 for identification to the
21 witness----

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1 ADC[MAJ HURLEY]: Captain von Elten, if I can take a quick look
2 at that.

3 ATC[CPT von ELTEN]: I'm sorry.

4 ADC[MAJ HURLEY]: I am know we talked about it yesterday.

5 [Prosecution Exhibit 203 was reviewed by the defense and then given
6 to the witness.]

7 Q. Please take a look. [Pause] Do you recognize that?

8 A. I do.

9 Q. What is it?

10 A. It is the
11

12 Q. How do you recognize it?

13 A. I am the one who put it together.

14 Q. When did you write it?

15 A. The first draft was in November of 2010.

16 Q. Why did you write it?

17 A.
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22 Q. And, where did you publish it?

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1 A. This was published under normal channels on our sharepoint
2 page and was sent out to a couple of combatant commands. I don't
3 recall which ones.

4 Q. How often did you create products like this?

5 A. Oh, it was ongoing. I mean, one or two a week.

6 Q. And, can you tell me--can you tell the Court a little about
7 what this Request For Support discusses?

8 A. Well,
9
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15 ATC[CPT von ELTEN]: You Honor, the United States offers
16 Prosecution Exhibit 203 for identification into evidence.

17 ADC[MAJ HURLEY]: Ma'am, the defense objects as to hearsay.

18 MJ: What is hearsay about it?

19 ADC[MAJ HURLEY]: It is an out of court statement. Its--from
20 Mr. Pearson's testimony, it is an out of court statement of Mr.
21 Pearson or someone who worked directly for him in formulating this
22 report.

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1 MJ: May I see it, please?

2 WIT: Sure.

3 [Prosecution Exhibit 203 for identification was given to the military
4 judge.]

5 MJ: Government, what is----

6 ATC[CPT von ELTEN]: Your Honor, we are offering that under
7 803(8) as a public record. Mr. Pearson detailed how JIEDDO created
8 records like this and he created it as part of his official duties
9 and went through normal channels used by JIEDDO to find the
10 information, memorialized it in accordance with their normal
11 procedures.

12 MJ: All right. Defense?

13 ADC[MAJ Hurley]: Ma'am, the first thing--part of the foundation
14 which we don't know about is , "Who was the requestor of this
15 information----

16 MJ: Hold on.

17 [The military judge asked that counsel move closer to a microphone.]

18 MJ: You have got to speak so----

19 ADC[MAJ Hurley]: Ma'am, I will come up here.

20 MJ: Okay.

21 ADC[MAJ HURLEY]: Can I be heard now?

22 MJ: Yes.

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1 ADC[MAJ HURLEY]: Great. The first part of the foundation that
2 is lacking is--law enforcement function, is--from the foundation that
3 we don't know whether or not that this was done pursuant to a law
4 enforcement request. Certainly that possibility has not been
5 excluded. And, ma'am, we don't believe it is a proper public record
6 or a proper record to be able to be admitted under 803(8).

7 MJ: If it not a law enforcement record, why is it improper?

8 CDC:[MAJ HURLEY]: If it is not a law enforcement record, ma'am,
9 it is improper--I guess to answer your question under 803(8), we
10 don't believe it is proper because it is essentially just a request--
11 It is an assemblage of information and pushing it out as a request,
12 as an ad hoc request. This isn't part of an ongoing function that
13 JIEDDO performs. It is a response to one thing, a RFS.

14 RFS stands for, Mr. Pearson?

15 WIT: Request For Support.

16 ADC[MAJ HURLEY]: It is a response to a specific request.
17 Furthermore, ma'am, failing that, we would say two more things. The
18 first is it is 403, that Mr. Pearson is capable of talking about the
19 contents of this document and laying out what he----

20 MJ: What is the unfair prejudice under 403?

21 ADC[MAJ HURLEY]: Ma'am, the unfair prejudice is that this is
22 going to go back with the sentencing authority, that is to say, you,

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1 when you are making your determinations, unlike the overwhelming
2 majority, if not all, of the testimonial evidence that you receive in
3 your capacity as the sentencing authority.

4 MJ: And, how is that unfairly prejudicial?

5 ADC[MAJ HURLEY]: Ma'am, that you get to refresh--Well, I guess
6 it is not--It is the position of the defense that it is unfairly
7 prejudicial because you get to review this at your leisure. That it
8 is not something that you would have to look at your notes or call to
9 your memory.

10 MJ: Okay.

11 Government, at this point, the Court is going to sustain
12 the objection unless you develop further foundation.

13 ATC[von ELTEN]: Retrieving Prosecution Exhibit 203 for
14 identification.

15 **DIRECT EXAMINATION (continued):**

16 Q. Mr. Pearson, you testified that Requests For Support came
17 from Combatant Commanders?

18 A. That's true, yes.

19 Q. Do you remember where the Request For Support came for this
20 document?

21 A. If I had access to our sharepoint page right now, I could
22 tell you, but I do not.

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1 Q. Where else do Requests For Support come from?

2 A.

3

4

5 Q.

6 A. I don't believe so, no.

7 Q. From any law enforcement agency?

8 A.

9

10 Q. So,

11

12 A. No, they did not. No.

13 ATC[CPT von ELTEN]: Now, Your Honor, the United States would

14 offer into evidence Prosecution Exhibit 203 for identification.

15 MJ: Did any other law enforcement entity request support for
16 this, do you remember that much?

17 WIT: I don't believe they did, no.

18 MJ: All right, the Court finds it is admissible as a public
19 record under M.R.E. 803(8).

20 ATC[CPT von ELTEN]: Permission to publish, ma'am?

21 MJ: Let me admit it, first.

22 TC[MAJ FEIN]: Ma'am, while you do that, may we have a moment?

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1 MJ: Yes.

2 CDC[MR. COOMBS]: And ma'am, just for the record, is that under
3 803(8)(a), the activities of the office and agency or is that a
4 different provision, so the defense understands why it was admitted?

5 MJ: I believe I admitted it under (b) for certain, but let me
6 look here; (a) and (b).

7 CDC[MR. COOMBS]: Thank you, ma'am.

8 TC[MAJ FEIN]: Ma'am, if I may, just to clarify so there is no
9 confusion, this was in 2010. Later, Your Honor, in 2011, I think a
10 year later, the prosecution in this case did request, separate and
11 apart from this document, that JIEDDO conduct a review. It was
12 unrelated to this topic and was a year later, it was not part of
13 this. So, that did occur a year later, Your Honor.

14 MJ: So, you are setting, for the record, that there was
15 something else that occurred but it is not this?

16 TC[MAJ FEIN]: That is correct, ma'am, it is after this that it
17 was pursuant to a direct request for me actually, but it was not that
18 document, Your Honor, nor was it during that timeframe.

19 MJ: Okay.

20 ATC[CPT von ELTEN]: Permission to publish, ma'am?

21 MJ: Go ahead.

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1 [The document was published by means of electronic overhead
2 projector.]

3 **DIRECT EXAMINATION (continued):**

4 Q. Can you read that, Mr. Pearson?

5 A. Yes. It is a little--there you go, that is pretty good.

6 Q. Is that better?

7 A. Yes.

8 Q. Now, Mr. Pearson,

9 A.

10 Q. Is that the user you testified about earlier?

11 A. No, this is a different one.

12 Q. Can you describe this user, please?

13 A.

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18 ATC[CPT von ELTEN]: One moment, please. [Pause]

19 Q. Can you please describe what we are looking at?

20 A.

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Q.

A.

Q.

A.

Q.

A.

MJ: Hold on. Yes?

ADC[MAJ HURLEY]: Mr. Pearson, pardon me.

MJ: All right, Government?

ATC[CPT von ELTEN]: 803(3) statement of impression, present
mind, and in this case, plan.

MJ: Plan?

ATC[CPT von ELTEN]: May I, Your Honor?

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1 MJ: Yes.

2 Q.

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4 A.

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9 Q. Can you please read----

10 MJ: Well wait a minute, I have not ruled on the objection yet.

11 What is the Government's----

12 ATC[CPT von ELTEN]: sorry, I am developing a little more for
13 the plan, Your Honor.

14 MJ: Well, he does not--what is your, the government's position
15 on why this is a plan; why this falls under 803(3)?

16 ATC[CPT von ELTEN]: Your Honor,

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22 MJ: All right, the government believes it is hearsay?

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1 ATC[CPT von ELTEN]: Yes, ma'am.

2 MJ: Okay. And your exception is 803(3), then?

3 ATC[CPT von ELTEN]: Yes, ma'am.

4 MJ: All right, Major Hurley, why would this not be admissible
5 under M.R.E. 803(3)?

6 ADC[MAJ HURLEY]: All of the bullets, ma'am?

7 MJ: Yes.

8 ADC[MAJ HURLEY]: All right, then, if I may use this, it will
9 make it a little easier for me, ma'am.

10 MJ: Certainly.

11 ADC[MAJ HURLEY]: Can you hear me?

12 MJ: Yes.

13 ADC[MAJ HURLEY]: So, ma'am, with respect to the first bullet,
14 it is a rundown and we would reiterate this objection to the
15 testimony that he rendered--that Mr. Pearson rendered with respect to
16 the previous slide, that that is not a plan, it is a rundown of,
17 "here is the information." There is no--it is just giving the
18 information out.

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1 WIT:

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4 ADC[MAJ HURLEY]: All right. Well, sir--well, ma'am, again, my
5 general----

6 MJ: So, these are--before I get there, let me just make sure I
7 understand this. The English bullets come from WikiLeaks?

8 WIT: Yes.

9

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11 MJ: All right, then what is the objection then?

12 ADC[MAJ HURLEY]: Ma'am, our objection would be the same thing
13 because it is still hearsay within hearsay.

14 MJ: All right. Is it hearsay or not?

15 ATC[CPT von ELTEN]: Which part, ma'am, I am sorry?

16 MJ: You think there is a distinction between the bullets?

17 ATC[CPT von ELTEN]: I think certain--there is a distinction
18 between some bullets, ma'am.

19 MJ: All right. Let us see, let us look at bullet one.

20 ATC[CPT von ELTEN]: Bullet one, ma'am--

21 MJ: All right, government, if you cannot figure it out, what
22 your theory is, the objection is sustained.

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1 ATC[CPT von ELTEN]: May I highlight particular bullets, ma'am,
2 with the part of the plan under the 803(3) theory?

3 MJ: Do you have a theory to argue?

4 ATC[CPT von ELTEN]:
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9 MJ: So, based on that, one or more--is one or more bullet
10 admissible under M.R.E. 803?

11 ATC[CPT von ELTEN]: There are admissible bullets, ma'am.

12 MJ: So, you only want to admit some of the bullets?

13 ATC[CPT von ELTEN]: Yes, ma'am.

14 MJ: Did you have a redacted copy of that?

15 ATC[CPT von ELTEN]: I do not, ma'am.

16 MJ: Do you want to make one?

17 TC[MAJ FEIN]: Yes, ma'am. We will--the United States requests
18 a recess and we will make that.

19 MJ: Let me--let me see it. I have already admitted that,
20 right?

21 ATC[CPT von ELTEN]: Yes, ma'am.

22 TC[MAJ FEIN]: Yes, ma'am.

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1 MJ: Then, let me see. I have admitted it under M.R.E. 803(3),
2 right?

3 ATC[CPT von ELTEN]: 803(8), ma'am.

4 MJ: All right, 803(8). So now we have hearsay within hearsay?

5 ATC[CPT von ELTEN]: Also ma'am, the United States would offer
6 it for the non-hearsay purpose----

7 MJ: Why don't we take a brief recess. How long will it take
8 you to articulate a theory on this that you can talk to me about?

9 ATC[CPT von ELTEN]: I could talk to you about one more theory
10 right now, ma'am. Which is, that we are not offering for the truth
11 that the contents are true but just simply that they are talking
12 about them.

13 MJ: That is why I asked you if it was hearsay a long time ago.

14 ATC[CPT von ELTEN]: Yes, ma'am, I misspoke. Yes, ma'am.

15 MJ: So what are you offering? If you are offering it for that
16 purpose, I will overrule the objection.

17 ATC[CPT von ELTEN]: I am offering it just for the statements
18 being made, ma'am, not for the truth of the matter.

19 MJ: All right. Major Hurley?

20 ADC[MAJ HURLEY]: Ma'am, first we would ask you to reconsider
21 admitting that document under M.R.E. 803(8). We do not believe that

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1 they are--the defense does not believe--or at least would request the
2 Court to identify which part of the prongs under----
3 [The court reporter indicated that counsel needed to move closer to a
4 microphone.]

5 MJ: He can't hear you.

6 ADC[MAJ HURLEY]: Yes, ma'am. Which part of 803(8)(a) and (b)
7 you believe this qualifies as evidence under. And then, ma'am, we
8 would also object to this information under our ongoing 1001(b)(4)
9 objection.

10 MJ: Okay, well, the 1001(b)(4) objection is noted for the
11 record. All right, the Court has already identified M.R.E. 803(8)(a)
12 and (b) and the Court has looked through the exhibit any finds that
13 none of it is admissible for the truth of the matter asserted. It is
14 admissible for the fact that it was said. So, overruled.

15 ADC[MAJ HURLEY]: Ma'am, finally if we would ask the court to do
16 a 403 analysis now that the probative value is not for the truth of
17 the matter asserted but for something less.

18 MJ: That the fact that it is there, the Court sees no unfair
19 prejudice to the admission of that document.

20 ADC[MAJ HURLEY]: Yes, ma'am.

21 MJ: Captain von Elten?

22 ATC[CPT von ELTEN]: Thank you, ma'am.

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1 DIRECT EXAMINATION (continued):

2 Q. Mr. Pearson, what are we looking at on this page?

3 A. This is a continuation from the previous page.

4 Q.

5 A.

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9 Q.

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11 A.

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16 Q.

17 A.

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21 ADC[MAJ HURLEY]: Ma'am, again we renew our 1001(b)(4) objection
22 and just a generalized relevance objection to this information.

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1 MJ: All right, noted.

2 ATC[CPT von ELTEN]: Your Honor, this is talking explicitly about
3 the information----

4 MJ: Excuse me?

5 ATC[CPT von Elten]: I thought you asked me to speak, ma'am.

6 MJ: I said, "noted".

7 ATC[CPT von ELTEN]: Oh, sorry, ma'am.

8 MJ: I assume you are putting this all in writing for tomorrow,
9 like the usual procedure.

10 ADC[MAJ HURLEY]: Yes, ma'am. And, so what we will do is
11 1001(b)(4) and then in addition to that, our relevance objection to
12 this line of testimony in the submission that we make to the Court.

13 MJ: Okay.

14 **DIRECT EXAMINATION (continued):**

15 Q. Mr. Pearson, what does this page say about

16 A. It says that,
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20 Q. Thank you. Mr. Pearson, if you could please read the first
21 bullet?

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1 A.

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4 Q. And, the second bullet--or, the second English bullet?

5 A.

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9 Q. Now, Mr. Pearson, you talked about----

10 ADC[MAJ HURLEY]: Captain von Elten, if I could interrupt.

11 Ma'am, the 1001(b)(4) objection. And, if we could understand how Mr.

12 Pearson knows that this is a statement of WikiLeaks.

13 MJ: Well, you can explore that on cross.

14 ADC[MAJ Hurley]: Yes, ma'am.

15 Q. Mr. Pearson, you testified about a video, two different

16 versions of it. Did you ever see this video on any of these

17 websites?

18 A. Yes. I saw links to the video, yes.

19 Q. Can you please describe the contents of this page

20 generally, please?

21 A.

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Q. Who did that translation?

A. Whoever posted the video.

Q. No, who did the translation?

A.

ADC[MAJ HURLEY]: Again ma'am, 1001(b)(4) objection especially given the common nature of YouTube. And, it's not--

, I hope, and so that would be the basis of the defense's objection.

MJ: You testified earlier you searched YouTube using, what keywords?

WIT:

MJ: Your objection is noted. Put it in writing.

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1 DIRECT EXAMINATION (continued):

2 Q. What version of the video did they----

3 A. When I--from what I had seen, it was only the 17 minute
4 version, which is the heavily edited version.

5 Q. How often did you see the full version?

6 A. I only saw it once, and that was when WikiLeaks originally
7 put out the video, they had the 17 minute, and then as a--I believe
8 they called it a research version, was the 39, but that wasn't
9 propagated anywhere near as much.

10 Q. How often did you see the 39 minute version when you
11 searched for WikiLeaks using Arabic script?

12 A. I didn't see it at all.

13 Q.

14

15 A.

16 ADC[MAJ HURLEY]: Ma'am, again, our relevance objection and
17 specifically relevance if it is not offered for the truth.

18 MJ: All right.

19 ATC[CPT von ELTEN]: Returning Prosecution Exhibit 203 to the
20 court reporter. That is all, Your Honor.

21 MJ: Cross examination?

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1 ADC[MAJ HURLEY]: Yes, ma'am. May we--could we leave the
2 prosecution exhibit out for a second? Thanks. And I'll only speak
3 when near a microphone.

CROSS-EXAMINATION

5 **Questions by the assistant defense counsel [MAJ HURLEY]:**

6 Q. Mr. Pearson, good afternoon.

7 A. Good afternoon.

8 Q. Let's talk about the YouTube posting first, all right?

9 A. Sure.

10 Q. So, when it came to the YouTube postings, you don't know
11 who was making those posts, correct?

12 A. Which ones?

13 Q. Yes.

14 A. Do I know them, personally or from a--no, I don't know who
15 they were, necessarily, no.

16 Q. And it--with respect to those posting the comments, it
17 could have been anyone that speaks Arabic?

18 A. It could have been anyone that speaks Arabic, yes.

19 Q. It could have been an insurgent?

20 A. It could have been.

21 Q. It could have been a student?

22 A. I would actually rather it was an insurgent than a student.

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1 Q. Right.

2 A.

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6 Q. But it could've been anybody?

7 A. Yes, it could have been anybody.

8 Q.

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10 A.

11 Q.

12 A.

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14 Q.

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17 A.

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19 Q.

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21 A.

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1 Q.

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3 A.

4 Q.

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6 A.

7 Q.

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9 A.

10 Q.

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13 A.

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15 Q.

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17 A.

18 Q.

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20 A.

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5 Q.

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11 Q.

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14 Q.

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16 A.

17 Q.

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20 A.

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1 Q. And you--in our previous conversation today and the
2 previous conversations we've had, Mr. Pearson--you said that you,
3 essentially, saw three groups of information that were released by
4 WikiLeaks and discussed?

5 A. Yes.

6 Q. The first thing--not necessarily a group, but the first
7 thing--was

8 A. That's correct.

9 Q. And the second thing was --and
10 we just use the expression,

11 A. Yes, correct.

12 Q. And the third thing was the

13 A. That's correct.

14 Q. By far, the biggest reaction was to the video?

15 A. Yes.

16 Q. After that,
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19 A.
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4 Q.

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6 A.

7 Q.

8 A.

9 Q. And you, personally, didn't report, in this report that
10 we've been talking about, on any GTMO files, right?

11 A. No, I never looked into GTMO files.

12 Q. So there was--as we indicated before, there was some
13 discussion around

14 A.

15 Q.

16 A. Okay.

17 Q. There was some discussion?

18 A. There was a lot of discussion.

19 Q. And that discussion included IED information?

20 A. Yes.

21 Q. And

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1 A.

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8 Q. And that's how they captioned it?

9 A. I don't believe--that's not the title of it, but that was
10 the analysis given by the person.

11 Q. Speaking of analysis, when the information was translated
12 back and forth, there was no--in the threads that you saw, there was
13 no analysis conducted on the information in Arabic, correct?

14 A. No,
15 . Then, right below that,
16 the person offered his analysis of what this shows.

17 Q. But that was cable by cable?

18 A.
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1 Q.

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3 A.

4 Q. And there may be other reasons that people--that traffic
5 is--it goes to the war logs, for instance?

6 A. I think it was general interest, yes, but there could be
7 other reasons, I'm sure.

8 Q. One of those reasons could be to check to--to check on
9 members of your family that have been missing as a result of these
10 conflicts?

11 A. I had never heard of any discussion of that, but I suppose
12 that's possible.

13 Q. Now, let's talk about the Department of State cables.
14
15

16 A. Absolutely.

17 Q. But,
18

19 A.
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21 Q.
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1 A. That would be a good hypothesis, yes.

2 Q. And then--and that hypothesis is supported by your analysis

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4 A.

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9 Q.

10 A. Right.

11 Q. So, when it came to the videos like, for instance, the
12 suite of YouTube videos that we saw posted--do you recall that image
13 that we--that you just looked at?

14 A. Uh-huh.

15 Q. Do you want me to put it back up?

16 A. Depends on what you're going to ask.

17 Q. Well, we'll just--I'll ask the question, we'll see where it
18 goes.

19 A. Okay.

20 Q. Did you watch the entire video with each one of those
21 posts, or did you just assess how long the video was?

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1 A. Well, some would be actually shorter. Some were 9 minutes
2 long, where they would actually take out--they would make it worse.
3 In fairness to the 17-minute version, there was some context--not as
4 much context as the 39-minute version, but there was some context.
5 They would actually shorten it to where there was even less context
6 as to what troops were doing there, so it was actually-----

7 Q. These--I'm sorry to cut you off. Go ahead.

8 A. Pardon me?

9 Q. These YouTube posters would cut that amount of information
10 off?

11 A. Yes. They can't add anything to it, they can only post as
12 is or they can take the original footage and splice it down.

13 Q. And these YouTube posters that would shrink that
14 information, they could often be members of the media?

15 A. Could they be members of the media? That's--if they were
16 and that did happen--for example, *Al Jazeera*, they would say that
17 they were with *Al Jazeera*. In fact, some of those Arabic versions
18 were used in *Al Jazeera* footage.

19 Q. In *Al Jazeera's* reporting on the information?

20 A. Yes, where they just showed the--I remember one was where
21 they just showed the moment that the group of men, which I assessed
22 to be the two Reuters journalists, and then a group of insurgents,

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1 there, with them--when they were gunned down; that instance. So, for
2 example, they would talk about it and then show just that part and
3 then nothing else.

4 Q. And that's consistent with your own experiences watching
5 American journalism? They would just use certain bits of footage?

6 A. True, but it's much--I mean, it's worse over in the Middle
7 East. When you're talking about Al Jazeera, it's certainly worse.

8 Q. There's a lot of discussion whether it was about the cables
9 or about the video or about the war log, right, that you observed a
10 lot of discussion?

11 A. Yes.

12 Q. Did anyone take responsibility in these discussion or was
13 it just a discussion of--a responsibility for any particular act, or
14 was it just a discussion of what had occurred.

15 A.
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21 Q. Yes.

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1 A. When it came to a group in Iraq or Afghanistan, I do
2 believe seeing them say that there--that this is us doing this.

3 Q. So, claims of responsibility for the information--for the--
4 on the data that was disclosed?

5 A. Which--exactly. Which wasn't surprising because they would
6 film their--they would film them making the bomb, the suicide bomber
7 hugging everybody, pictures of him smiling. They would have--sorry
8 for the term, but--a cheesy expression of him and his face in the
9 cloud and it was kind of a happy thing and then it would show them
10 loading up the car or truck and then a far off video and two or three
11 different camera angles of him blowing himself up and showing,
12 literally, this is who did this. So, they weren't trying to hide
13 anything. They'd be more than willing to prove that they had done
14 something; that was the way to do it--was to film it.

15 Q. Were there any other claims for responsibility for matters
16 not in the disclosures--for any other matters?

17 A. There was claims of responsibility for other things. As
18 far as specifically for what was in the cables or within the war
19 logs, I did see people who would make comments about, "Oh, this group
20 did this or this group did that,"

21
22 I know there was another claim about them

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1 executing somebody that couldn't be proved--that they executed
2 somebody because of the names that were released. I never found that
3 either. But they--there was talk of that. There was talk of, you
4 know, "We did this, we did that. Look, see."

5 Q. "Look, see," based on what was in the cables----

6 A. Yes.

7 Q. "Look, see," based on what was in the war logs?

8 A. Yes.

9 ADC[MAJ HURLEY]: Just one second, sir. Nothing further, sir.

10 Thank you.

11 Captain Von Elten, are you going to use this on redirect?

12 ATC[CPT VON ELTEN]: I don't believe so.

13 ADC[MAJ HURLEY]: All right.

14 [The assistant defense counsel returned PE 203 for identification to
15 the court reporter.]

16 **REDIRECT EXAMINATION**

17 **Questions by the assistant trial counsel [CPT VON ELTEN]:**

18 Q.

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20 A.

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4 Q.

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6 A.

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9 Q.

10 A.

11 Q.

12 A.

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1 Q.

2 you captured in PE 203?

3 A.

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5 Q.

6 A.

7 Q.

8 A.

9 Q.

10 A.

11 Q.

12 Q.

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17 ATC[CPT VON ELTEN]: Retrieving Prosecution Exhibit 203.

18 Permission to publish?

19 MJ: Go ahead.

20 [The assistant trial counsel published PE 203 for identification on
21 the projected screen.]

22 [Examination of the witness continued.]

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1 Q.

2 A.

3 Q.

4 A.

5 Q.

6 A.

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10 Q.

11 A.

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21 Q. On cross-examination, you mentioned a "fence-sitter."

22 A. Yes.

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1 Q. What is a

2 A.

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16 Q.

17 A.

18 Q.

19 A.

20 ATC[CPT VON ELTEN]: Nothing further.

21 MJ: Anything further from the defense?

22 ADC[MAJ HURLEY]: No, ma'am.

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1 ATC[CPT VON ELTEN]: Returning Prosecution Exhibit 203.

2 MJ: I just have one question.

3 EXAMINATION BY THE COURT-MARTIAL

4 Questions by the military judge:

5 Q.

6

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8 A.

9 Q.

10 A.

11

12 Q.

13 A.

14 Q.

15 A.

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21 MJ: Any follow-up based on that?

22 ADC[MAJ HURLEY]: No, ma'am.

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1 ATC[CPT VON ELTEN]: Just one question, ma'am.

2 REDIRECT EXAMINATION

3 Questions by the assistant trial counsel [CPT VON ELTEN]:

4 Q. What do you mean by "Google translation"?

5 A. If you go to Google Translate, you can translate a word, a
6 phrase; you can translate an entire website. And

7
8
9
10 Q.

11 A.
12
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14 ATC[CPT VON ELTEN]: Thank you.

15 MJ: I'm sorry, I do have one more question I forgot to ask you.

16 EXAMINATION BY THE COURT-MARTIAL

17 Questions by the military judge:

18 Q.
19

20 A. Yes, ma'am.

21 Q.
22

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~~SECRET~~

1 A.

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4 Q.

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6 A.

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11 Q.

12

13 A.

14

15 Q.

16 A.

17 MJ: Any follow-up based on that?

18 ATC[CPT VON ELTEN]: No, Your Honor.

19 ADC[MAJ HURLEY]: No, ma'am.

20 MJ: Okay. Temporary or permanent excusal?

21 ATC[CPT VON ELTEN]: Temporary, ma'am.

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1 [The witness was duly warned, temporarily excused, and withdrew from
2 the courtroom.]

3 MJ: All right. Are we ready to proceed with the next witness?

4 TC[MAJ FEIN]: Ma'am, if we could have a brief comfort break and
5 then we'll have Mr. McCarl ready.

6 MJ: All right. How long do you need?

7 TC[MAJ FEIN]: Just 10 minutes, ma'am.

8 MJ: That fine for the defense?

9 ADC[MAJ HURLEY]: Yes, ma'am.

10 MJ: All right. Court is in recess until 10 minutes after 1700
11 or 5 o'clock.

12 [The court-martial recessed at 1658, 7 August 2013.]

13 [The court-martial was called to order at 1710, 7 August 2013.]

14 MJ: Court is called to order. Let the record reflect all
15 parties present when the court last recessed are again present in
16 court. Anything we need to address before we call the witness?

17 TC[MAJ FEIN]: No, ma'am.

18 MJ: Please call the witness.

19 CDC[MR.COOMBS]: Actually, Angel----

20 ATC[CPT OVERGAARD]: Captain Von Elten is absent and----

21 TC[MAJ FEIN]: Thank you.

22 ATC[CPT OVERGAARD]: -----Captain Overgaard is present.

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1 TC[MAJ FEIN]: And, once again, I screwed that up, Your Honor.

2 MJ: I thought something looked different. Okay.

3 TC[MAJ FEIN]: Yes. All parties when the court last recessed
4 are not all present, ma'am. Captain Von Elten and Captain Overgaard
5 switched out.

6 MJ: All right. Mr. Coombs, thank you.

7 ATC[CPT OVERGAARD]: So the United States recalls for redirect,
8 Mr. McCarl.

9 MR. JAMES MCCARL, civilian, was recalled as a witness for the
10 prosecution, was reminded of his previous oath, and testified as
11 follows:

12 REDIRECT EXAMINATION

13 Questions by the assistant trial counsel:

14 Q. Sir,

15

16 A.

17 Q.

18

19 A.

20 Q.

21 A.

22 Q.

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1 A. Yes.

2 Q. Now, you talked on cross about the literacy problem at the
3 tactical level in both Iraq and Afghanistan. Was there a literacy
4 problem in either theater with the research and development folks?

5 A. No. That's not where you're going to find your literacy
6 problem.

7 Q. And

8

9 A.

10

11

12

13

14 Q. So,

15 A. They will not be the guys who employ the IEDs, themselves,
16 they will be the guys who are in some research environment where they
17 can think through how to reconfigure, how to improve a particular
18 type of IED.

19

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1 Q.

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3 A.

4 Q.

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7 A.

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10 Q.

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13 A.

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Q.

A. They were.

Q.

A.

Q. And, sir, based on your multiple years of experience

, would you, as the enemy, find the
information released by WikiLeaks useful?

ADC[MAJ HURLEY]: Objection, ma'am, leading. And it's also--it
also requires speculation from the witness.

MJ: Well, this falls within--rephrase that question.
[Examination of the witness continued.]

Q. As the enemy, sir, would you, based on your experience,
find the information----

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1 MJ: You phrased it the same way.

2

3 Q.

4

5 MJ:

6 Q. Okay, sir--or ma'am.

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8 A.

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1 ADC[MAJ HURLEY]: Ma'am, we'd object to that answer under
2 1001(b)(4).

3 MJ: Got it.

4 [Examination of the witness continued.]

5 Q. And would that information make the enemy more effective
6 against U.S. forces?

7 A. Well, I think the answer is, clearly, yes.

8 ATC[CPT OVERGAARD]: One moment, please. No further questions.

9 MJ: Any re-cross?

10 ADC[MAJ HURLEY]: Yes, ma'am.

11 **REXCROSS EXAMINATION**

12 **Questions by the assistant defense counsel [MAJ HURLEY]:**

13 Q. Let's talk about the for a second.

14

15

16

17 A. I think it's more than that.

18 Q. And that includes the detailed information you're going to

19 see

20 A. You will find all of that in there.

21

22

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1 Q. The SIGACT isn't an , is it?

2 A. It is not, it is

3

4 Q. It's a--

5

6 A. A , that is correct.

7 Q. So--and I guess I just--in your mind right now, sir,

8

9

10 A. Well,

11

12

13

14

15

16 Q. Sir, on that topic, the military is jargon-heavy, correct?

17 A. Right.

18 Q. And, even inside the military, it can be difficult for us

19 to understand each other if there isn't an understanding of the

20 jargon that we're using with each other?

21 A. I agree with that.

SECRET

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1 Q. And, sometimes, it's even harder for military people, sort
2 of like yourself, a military man for 30 years, to communicate with
3 civilians if you use the jargon specific--that we, in the military,
4 have a tendency to use?

5 A. That's true.

6 Q. And that jargon would be like,

7 A. Could be.

8 Q.

9 A. Yep.

10 Q. And, if you didn't have the basis of information of that,
11 you would be left wondering as to what exactly that really meant?

12 A. But, of course, all of that is readily available on open
13 source. You can find all of that jargon, you can find all of those
14 explanations if you are interested in doing so.

15 Q. Did you include that open source analysis in--as you are
16 were doing this greater analysis for this particular information that
17 was disclosed, did--was there--for your open source team, did they
18 ever say, "Okay, what's really out there? Like, is this jargon out
19 there that's easily determinable?"

20 A. We did not ask that question.

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2 So, we did not ask them that question. I could, but I didn't.

3 Q. And, likewise,

4

5 A. That's correct.

6 Q. Now, you talked about,

7 what you could do

8 with certain bits of information, right? You talked about that, just

9 now, with Captain Overgaard?

10 A. Yes.

11 Q. And

12 A. It is, yes.

13 Q. And if you

14

15 A. Yes.

16 Q. As much as you could process?

17 A. Within the time limits that I have, yes.

18 Q. News reports--

19

20 A.

21 Q. Friendly forces field manuals?

22 A. In the time allotted, yes.

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SECRET

1 Q. Friendly forces reports?

2 A. If it were germane to the question I was asked, yes.

3 ADC[MAJ HURLEY]: Thank you, sir. Nothing further.

4 MJ: Any last redirect?

5 ATC[CPT OVERGAARD]: No, ma'am.

6 MJ: All right. Mr. McCarl, I have a few questions.

7 **EXAMINATION BY THE COURT-MARTIAL**

8 **Questions by the military judge:**

9 Q. I believe you testified earlier

10
11 , is that correct?

12 A.

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18 Q. So you wouldn't--three in 2009 to 112 in----

19 A. 188.

20 Q. 188 in 2012?

21 A. Correct.

22 Q. Do you have the 2010 and 2011 statistics?

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1 A. I have them but I don't have them--

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3
4
5
6 Q.

7 A. Yes.

8 Q.

9
10
11 A. Rephrase your question. I'm not sure I understand.

12 Q. Did you testify as to when--I mean, when you were doing
13 your analysis, did you know when the--WikiLeaks released the----

14 A. Yes, we did.

15 Q.

16 A. Yes.

17 Q. And when was that, do you remember?

18 A. I believe it was--we understood, I think--we understood,
19 '09 where I think we were, but it may have been earlier.

20 Q. Well, assume the release was later,
21

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1 , I believe your testimony on direct was there was a correlation-

2 ---

3 A. Right.

4 Q. ----but not a causation?

5 A. That's correct. We said--what I said was that would--that
6 trend was already going up. That trend was already going up and we
7 already had--

8

9 Q. So, '09 was about when we first started seeing it.

10 Q. For you were asked to do the analysis of the impact of the
11 WikiLeaks releases,

12

13

14 A. No. The way we would say it was this:

15

16

17 Q. And a CCIR is?

18 A. A Commander's Critical Information Requirement because that
19 would, then, in turn, allow him to make decisions as to whether he
20 needed to affect a material change or whatever, from his perspective.
21 And so we were tracking it from that perspective all ready and
22 continued to do so, now.

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1 Q. I guess that's where the questions I have are going. If

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3
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5 A. We are.

6 Q. So you opined that the WikiLeaks releases may have--is your
7 opinion just that it occurred at the same time or it somehow caused
8 it?

9 A. No, what I said was we believed that it contributed to and
10 it seems to have a correlation with that rise.

11 Q. Why?

12 A. Because it's moving increasing numbers at the same--over
13 those years an increased number, and so a variety of factors would
14 cause the threat to do this.

15
16
17 Q. Do you believe they are--do you think that they already
18 knew that?

19 A.
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21
22

so----

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1 Q.

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4 A.

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7 Q. Do you know what the body of evidence there was X-ing out
8 the WikiLeaks releases?

9 A. I can't cite a particular article or a particular--any
10 other thing other than the evidence that they had already begun
11 working on that particular concept.

12

13

14

15 Q.

16 A.

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20 Q.

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~~SECRET~~

~~SECRET~~

1 A.

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8 Q.

9

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11 A.

12 Q.

13

14 A.

15 Q. And you also testified--I'd just like to clarify your

16 testimony

17 A.

18 Q.

19

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21 A.

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~~SECRET~~

~~SECRET~~

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3 Q.

4 A.

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3 Q. With the WikiLeaks releases, was there anything
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6 A.
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11 Q.
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15 A. I did, but I--if you need me to repeat it, I will

16 Q. Maybe I just wrote something down. Let me look at my
17 notes. Okay, if you would?

18 A.
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1 Q. And did you have an example of that one?

2 A. Of a----

3 Q.

4 A.

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7 MJ: All right. Thank you. Any follow-up based on that?

8 ADC[MAJ HURLEY]: Yes, ma'am, I have some questions--or the
9 defense has questions.

10 MJ: Okay. Government, you go first.

11 ATC[CPT OVERGAARD]: Yes, ma'am. One moment, please. Thank
12 you.

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REDIRECT EXAMINATION

1
2 Questions by the assistant trial counsel [CPT OVERGAARD]:

3 Q. Just to clear up the date, when did you first become aware-
4 -with--of the alleged release of the U.S. government information?

5 A. Well, when it came out on the news is when I became aware
6 of it, but the first time we put our hands on it, we began to work
7 the problem; it was in December of 2010.

8 Q. December 2010? And do you--

9
10 A. That was the

11 Q. And then how about the

12 A. That was in January of--

13
14 Q. Okay.

15 MJ: January of '11?

16 WIT: Yes, January of '11.

17 [Examination of the witness continued.]

18 Q. And you talked

19
20 A. To.

21 Q.

22

~~SECRET~~

~~SECRET~~

1 A. Well, the information

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6 ATC[CPT OVERGAARD]: One moment. No further questions, ma'am.

7 MJ: Defense?

8 ADC[MAJ HURLEY]: Yes, ma'am.

9 **RECROSS EXAMINATION**

10 **Questions by the assistant defense counsel [MAJ HURLEY]:**

11 Q. So, as you recall,

12
13
14 A. Yes.

15 Q.

16
17 A.

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19
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21 Q.

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~~SECRET~~

SECRET

1 A.

2

3

4 Q. Sometimes euphemisms don't translate very well, you would
5 understand--or do you agree with that proposition--that English
6 euphemisms or American euphemisms don't translate to other languages?

7 A. It may, yeah.

8 Q. All right. And I just want to make sure that we're
9 operating with the same definition from 2009 to 2012 about these--the
10 data that you reported to Colonel Lind.

11

12

13 A.

14

15 Q. So, during that time--and I believe you indicated this
16 before,

17 A.

18 Q.

19 A.

20 Q. All right.

21 MJ: Now--I'm sorry. That last--you said--the last----

22 WIT:

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1 [Examination of the witness continued.]

2 Q. Is there any way, in the--in any of those years, to know
3 how many were found or how many were exploded, or were they all just
4 grouped together?

5 A. Yes, but I can't break them out for you right now. We
6 could go back and look into the different reports and break those
7 into different groups.

8 A. And that's true for every one of those years that you
9 talked about? 2009, 2010, 11, and 12?

10 A. Yeah.

11 ADC[MAJ HURLEY]: Thank you, sir. Nothing further.

12 MJ: Anything else from the government?

13 ATC[CPT OVERGAARD]: No, ma'am.

14 MJ: All right. Temporary or permanent excusal?

15 ATC[CPT OVERGAARD]: Temporary, ma'am.

16 [The witness was duly warned, temporarily excused, and withdrew from
17 the courtroom.]

18 MJ: All right.

19 TC[MAJ FEIN]: Ma'am, just for the record, you accidentally said
20 Mr. Pearson not Mr. McCarl.

21 MJ: Apologize for me when you see him. Is there anything else
22 we need to address before we recess the court until 0930 tomorrow?

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1 TC[MAJ FEIN]: No, ma'am.

2 ADC[CPT TOOMAN]: One moment, ma'am.

3 TC[MAJ FEIN]: I'm sorry, one second.

4 [Counsel for both sides conferred.]

5 TC[MAJ FEIN]: Ma'am, based off today's testimony, the
6 government is assessing whether we still intend to call tomorrow
7 morning's witness at all. We've already notified the defense prior
8 to now and we're meeting with the prospective witness after this so,
9 we'll notify the Court. If we don't, Your Honor, the United States
10 recommends we reconvene at 9:30 because that's when we told the
11 public and then we'll figure out the next time to call the following
12 witness.

13 MJ: Okay. We can do that. So, we'll reconvene at 0930 anyway?

14 TC[MAJ FEIN]: Yes, ma'am.

15 MJ: Okay. Anything else we need to address before we recess
16 the court?

17 ADC[MAJ HURLEY]: Not from the defense, ma'am.

18 TC[MAJ FEIN]: No, ma'am.

19 MJ: All right. I would like to see counsel for both sides with
20 Mr. Parra, just briefly before we leave tonight just for future
21 scheduling.

22 TC[MAJ FEIN]: Yes, ma'am.

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1 MJ: All right. Court is in recess until 0930 tomorrow morning.

2 [The court-martial recessed at 1744, 7 August 2013.]

3 [END OF PAGE]

~~SECRET~~

1 [The court-martial was called to order at 0931, 8 August 2013.]

2 MJ: Court is called to order.

3 Major Fein, please account for all parties.

4 TC[MAJ FEIN]: Yes, Ma'am. All parties in the court when court
5 last recessed are again present, with the one exception: Captain von
6 Elten is absent, Captain Morrow is present. Also, ma'am, as of, I'm
7 sorry, this is an unclassified open session. The court security
8 officer completed an open hearing checklist that will be filed the in
9 Post-Trial Allied papers. As of 0923 this morning, ma'am, there are
10 seven members of the media in the Media Operation Center, one
11 stenographer, there are no media in the courtroom, three spectators
12 in the courtroom. And although the overflow trailer is available, it
13 is not currently being used.

14 Also, ma'am, in the closed session yesterday the United
15 States remarked what was previously marked as Appellate Exhibit 642,
16 which was the classified version of the government's response to
17 defense objections in the R.C.M. 1001(b)(4) for Major General Nagata
18 and Colonel Chesnutt. It was previously marked as Appellate Exhibit
19 642. It is now remarked as 642 Alpha. And the United States has
20 created an unclassified and redacted version and that's been marked
21 as Appellate Exhibit 642 Bravo.

22 MJ: All right. Thank you. Is that the only new Appellate
23 Exhibit that's been added?

1 TC:[MAJ FEIN]: Other than the court's order, yes, ma'am.

2 MJ: All right. And if I understand correctly, I met with
3 counsel at an R.C.M. 802 conference briefly before we came on record
4 today. Defense advised that the objections from yesterday have been
5 given to the government and the government at this point has not yet
6 compiled them in accordance with the procedures that we had. And
7 that's going be done today; is that correct?

8 TC:[MAJ FEIN]: Yes, ma'am. That will be done this morning.

9 MJ: All right. And we were scheduled to hear a witness this
10 morning. What is the status?

11 TC:[MAJ FEIN]: Ma'am, the United States no longer intends to
12 call that witness any longer, so what we have done is brought this
13 afternoon's witness in earlier to allow the defense to question or
14 meet with witness beforehand to accelerate today's schedule.

15 MJ: My understanding is the parties have conferred and have
16 come up with a mutually agreeable schedule for today?

17 ADC[CPT TOOMAN]: Yes, ma'am.

18 TC:[MAJ FEIN]: Yes, Ma'am. The United States proposes that
19 after we recess this court, defense meets with that witness and then
20 the court -- we come back on the record at noon to start the first
21 witness of the day.

22 MJ: At 12:00?

23 TC:[MAJ FEIN]: Yes, ma'am.

1 MJ: And does the government anticipate going into a closed
2 session with that witness?

3 TC[MAJ FEIN]: At this present time, no, ma'am, the United
4 States does not.

5 ADC[CPT TOOMAN]: Ma'am, we concur as laid out by the
6 government, have no objection to it.

7 MJ: Okay. Is there anything else then we need to address
8 before we recess the court until 12:00?

9 TC[MAJ FEIN]: No, ma'am.

10 ADC[CPT TOOMAN]: No, ma'am.

11 MJ: All right. Court is recessed until 12:00.

12 **[The court-martial recessed at 0934, 8 August 2013.]**

13 **[The court-martial was called to order at 1215, 8 August 2013.]**

14 MJ: Court is called to order.

15 Major Fein, please account for us.

16 TC[MAJ FEIN]: Yes, ma'am. All parties in the court in the last
17 recess are again present with one exception: Captain Overgaard is
18 absent, Captain von Elten is present.

19 Also, Your Honor, during the recess the United States had
20 marked two -- well, one Appellate Exhibit but twice, this is
21 Appellate Exhibit 644. 644 Alpha is the government's response to the
22 defense objection to Mr. McCarl and Mr. Pearson and under R.C.M.
23 1001(b)(4), it also incorporates in the defense's actual objections.

1 And then Appellate Exhibit 644 Bravo is the unclassified redacted
2 version.

3 MJ: All right. Do -- am I going to have a copy of that?

4 TC[MAJ FEIN]: Yes, ma'am. And a working classified ----

5 MJ: Okay. Yeah ----

6 TC[MAJ FEIN]: ---- version.

7 MJ: ---- I don't need the redacted version ----

8 TC: Yes, ma'am.

9 MJ: ---- I can just have a copy of the regular version ----

10 TC[MAJ FEIN]: Yes.

11 MJ: Thank you.

12 All right. Is there anything we need to address before we
13 call the next witness? I do note, for the record, that the next
14 witness we already had a stipulation of expected testimony from this
15 witness. That was Prosecution Exhibit 183 and counsel and I met
16 briefly in a R.C.M. 802 conference where Major Hurley advised that,
17 in light of this Prosecution Exhibit 183, some of the -- the defense
18 is concerned that there may be cumulative testimony; is that correct?

19 ADC[MAJ HURLEY]: Yes, ma'am.

20 MJ: The court has a copy of Prosecution Exhibit 183 for
21 Identification that was already read in the record. So let's try to
22 avoid being cumulative. Anything else we need to address before we
23 call the witness?

1 TC[MAJ FEIN]: Yes, ma'am. To make a correction, it was not
2 Captain Overgaard that was on the record this morning, it was Captain
3 Morrow who was on the record and no longer present.

4 MJ: All right. Thank you.

5 TC[MAJ FEIN]: And there's nothing further, Your Honor.

6 ADC[MAJ HURLEY]: Not from the defense either, ma'am.

7 MJ: Okay. Please call witness.

8 ATC[VON ELTEN]: Your Honor, the United States calls Commander
9 Aboul-Enein.

10 **COMMANDER YOUSSEF H. ABOUL-ENEIN, DIA, was called as a witness for**
11 **the prosecution, was sworn, and testified as follows:**

12 **DIRECT EXAMINATION**

13 **Questions by the assistant trial counsel [CPT von Elten]:**

14 Q. For the record, you're Commander Aboul-Enein from the
15 Defense Intelligence Agency?

16 A. Yes.

17 Q. And sir, we're here to qualify you as an expert in Al Qaeda
18 terrorism and ideology?

19 A. Yes.

20 Q. Let's start off by reviewing your background quickly. Sir,
21 you are currently assigned to the Defense Intelligence Agency?

22 A. I am.

23 Q. You're subject matter expert on violent Islamist ideology?

1 A. I am.

2 Q. At the Defense Combating Terrorism Center?

3 A. Yes.

4 Q. And there you provide analysis for over four hundred --

5 analysis leadership for over four hundred analysts on violent

6 terrorism?

7 A. Yes.

8 Q. You are also a Middle East foreign area officer?

9 A. Yes.

10 Q. As part of that, you have prepared talking points for

11 senior leaders including Secretary of Defense?

12 A. I have.

13 Q. Since 2006, you've served as Senior Encounter Terrorism

14 Advisor, Warrant Officer, instructor on militant Islamist ideology at

15 Joint Intelligence Task Force for combating terrorism?

16 A. That's correct. It's currently DCTC, though.

17 Q. And what is DCTC?

18 A. Defense Combating Terrorism Center.

19 Q. You also advised the Homeland Security Committee on violent

20 Islamist radicalization?

21 A. I have.

22 Q. You served as the Country Director for North Africa and

23 Egypt, the Assistant Country Director for the Arabian Gulf and

1 Special Advisor on Islamist militancy at the office of the Secretary
2 of Defense for National Security Affairs?

3 A. I have.

4 Q. And sir, you are a military adjunct faculty for Middle East
5 counter-terrorism analysis at the National Intelligence University?

6 A. I am.

7 Q. Sir, you've published several books which included militant
8 Islamist ideology, understanding the global threat ----

9 MJ: Captain Von Elten, this is all in the stipulation of
10 expected testimony I have it.

11 ATC[VON ELTEN]: United States offers Commander Aboul-Enein as
12 an expert in Al Qaeda terrorism and ideology.

13 ADC[MAJ HURLEY]: No objection.

14 MJ: So accepted.

15 **Questions continued by the assistant trial counsel [CPT von Elten]:**

16 Q. Sir, what is Al Qaeda propaganda?

17 A. Al Qaeda propaganda is basically fragments of Islam,
18 fragments of Islamic history, Islamic theology weaved into a
19 modernist narrative. It's mainly designed to support a core ideology
20 or core philosophy basically of a clash of civilizations. In other
21 words, that the west is at war with Islam.

22 Q. Why is the clash of civilizations important?

1 A. The clash of civilizations is extremely important in order
2 to basically have a typical narrative. A narrative of basically,
3 this is the -- first of all, there's the war between the west and
4 Islam, that's one. Two, that what is happening in the Muslim world
5 is a result of what the United States is doing and, more importantly,
6 to address the various grievances there. Of course, the outline of
7 those grievances is to purport a methodology that propagates their
8 world view and that methodology typically involves violent means of
9 addressing the various grievances in the region.

10 Q. How is propaganda used to accomplish those goals?

11 A. Propaganda is extremely important. As a matter of fact, to
12 quote Ayman Al-Zawahri, the current leader of Al Qaeda, at some point
13 he had said that fifty percent of this war is perception and media.

14 Q. Why is perception important?

15 A. Perception is important because it provides a good
16 environment for recruitment, for fundraising, and for support for Al
17 Qaeda's grander strategy and objectives.

18 Q. Who's the audience for propaganda?

19 A. The audience for propaganda it could be anyone from people
20 with Al Qaeda sympathies, which is fine, to anyone who wants to give
21 money to the cause to anyone who wants to create -- who wants to
22 carry out hostile acts for that cause.

23 Q. What is Al Qaeda's methodology?

1 A. Al Qaeda's methodology is primarily to propagate an Islamic
2 social order or Islamic government, if you will -- social order
3 primarily in their image typically through violent means.

4 Q. How do -- how does Al Qaeda use propaganda to affect its
5 influence?

6 A. It basically creates an environment conducive for their
7 opera -- for their area of operation, if you will, by basically
8 creating a situation where if you've got a portion of the population
9 that believes that they're in a bipolar struggle, if you will, like
10 Al Qaeda does, then you have everything from not cooperating with
11 local authorities to outright hostile engagements with either local
12 authorities or with the U.S. combat troops in the region.

13 Q. What medium does Al Qaeda use to spread its propaganda?

14 A. Sure. Primarily it's now the cyber domain, primarily is
15 the chief method of them propagating its ideas and ideology and
16 methodology.

17 Q. What tools do they use in the cyber domain?

18 A. They use chat rooms. They use websites. They use actually
19 -- they even have a full-time kind of media outlet called Al-Sahab.

20 Q. Why does Al Qaeda rely on cyberspace?

21 A. Well I -- in my opinion, probably it's best to quote
22 Zawahri directly. Around 2008, he gave a 9/11 anniversary video and

1 in that video -- it's about 120 minutes long, but in portions of that
2 video, he basically says that you can't trust ----

3 ADC[MAJ HURLEY]: I'm sorry, sir ----

4 MJ: Yes?

5 ADC[MAJ HURLEY]: Hearsay.

6 MJ: Government?

7 ATC[VON ELTEN]: Not offered for the truth. But just for the
8 statements being made.

9 MJ: All right. Overruled.

10 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

11 A. Zahwahiri says you can't trust Al Jazeera, you can't trust
12 channels like Al Arabiya. If you want to get your news about Al
13 Qaeda, you have to download information from Al-Sahab. It's not
14 rocket science. Basically, they -- Al Qaeda feels -- Al Qaeda senior
15 leadership felt, at the time, in 2008, that they were losing control
16 of their message.

17 Q. Sir, let's talk a little bit about Department of State
18 information. Sir, have you ever worked with the Department of State
19 cables?

20 A. I have, yes.

21 Q. When have you worked with them?

22 A. When I was Country Director for North Africa, Egypt at OSD
23 Policy.

1 Q. And how long did you work with them?

2 A. From 2002 to 2006, 4 years.

3 Q. And in what capacity -- were you doing with them?

4 A. It's extremely important for us to get an understanding of

5 the country of area. Like for instance, if the Assistant Secretary

6 of Defense was traveling to the area, it's part of that interagency

7 process that we would share cables among various agencies so we can

8 have a better holistic view and also to understand State's

9 perspective and State's views because we don't want to, for instance,

10 advocate our own views without consideration from other agencies,

11 mainly the State Department, which has a lead on foreign policy.

12 Q. Sir, when did you first become familiar with WikiLeaks?

13 A. Like the rest of America, through the media.

14 Q. Where ha -- are you familiar with an instance where Al

15 Qaeda has relied on the purported Department of State cables?

16 A. Two instances come to mind where Al Qaeda has utilized

17 WikiLeaks' information. The first was in *Inspire* Magazine, winter

18 2010 edition. The second was in a 2011 audio -- video, I should say.

19 It was a video.

20 Q. Sir, let's start by talking a little bit about *Inspire*

21 Magazine. What is *Inspire* Magazine?

22 A. *Inspire* Magazine is a very glossy, highly produced -- from

23 an adversarial point of view -- nicely produced English language

1 magazine designed to recruit and to target young English speaking
2 members or audiences, if you will.

3 MJ: Yes.

4 ADC[MAJ HURLEY]: Sir. Ma'am, objection. Cumulative. This --
5 both of these bits of information were included in the stipulations
6 of testimony.

7 MJ: Are you going to move forward with this?

8 ATC[VON ELTEN]: I was going to ask him why English is
9 important. I was going to ask why English is important.

10 MJ: All right, overruled. Go ahead.

11 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

12 Q. Why is the magazine published in English?

13 A. It's published in English -- it's a result of the United
14 States and our allies hardening our targets and what has happened is
15 to understand *Inspire* magazine, you actually have to understand an
16 individual by the name of Abu Musab Al-Suri who is typically the
17 future brains, future strategist of Al Qaeda. If you want to
18 understand Al Qaeda in the 21st century, you need to understand Al-
19 Suri's writings. He, for instance, came up the notion of leaderless
20 resistance. Which means don't wait for orders, go ahead and form
21 your own cell, radicalize using the Internet, discover how you can
22 build a bomb using the Internet, and then go out and carry out an
23 operation in the name of Al Qaeda. Don't wait for orders, like, kind

1 of lone wolf cells, if you will, is Al-Suri's ideas. *Inspire*
2 Magazine is based on Al-Suri's ideas. English language is important
3 because it is hoped that they could be able to recruit individuals
4 who may be inspired by *Inspire* Magazine.

5 ATC[von ELTEN]: Inspired ----

6 TC[MAJ FEIN]: I'm sorry, ma'am. Sir -- could we ask witness to
7 please spell for the court reporter that name?

8 MJ: Okay.

9 WIT: Sure.

10 MJ: I was not sure if you were standing up for health reasons
11 or you wanted to say something.

12 TC[MAJ FEIN]: No, no, ma'am. My back feels fine. Thank you.
13 Just for the court reporter, if you could spell ----

14 WIT: Certainly, I shall. It's Abu Musab Al-Suri. A-B-U, space,
15 M-U-S-A-B, space, A-L, dash, S-U-R-I.

16 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

17 Q. In using English language, who are hoping to inspire?

18 A. They're mainly trying to inspire individuals in the west,
19 in the U K., and the United States. English speaking countries.

20 Q. Sir, in your opinion, what is the effect of the purported
21 cables on Al Qaeda propaganda?

22 A. Well, first of all, when you look at *Inspire* Magazine in
23 2010, and you look at the video together, what you find is there's a

1 great propaganda value for Al Qaeda. In other words, it's a -- it
2 provides them a treasure trove of information and data in which to
3 bolster their own core in the clash of civilizations.

4 Q. Sir, you also mentioned a video. What is your opinion on
5 the effect of that video on Al Qaeda propaganda?

6 A. Maybe we -- let's break down the video. On the one hand
7 you have images of General Kayani on the backdrop of WikiLeaks, you
8 know, kind of being the former Pakistani Chief of Staff, the Armed
9 Forces -- Pakistani Armed Forces, sitting with U.S. officials. In
10 the backdrop for WikiLeaks you have a U.S. official sitting with
11 Yemeni officials and the backdrop of WikiLeaks cables and the
12 messaging, if you will, is an attempt to show the nefarious, if you
13 will, U.S. Government's tentacles in these regions without
14 understanding its context in the War on Terrorism and that Al Qaeda
15 is a threat to Muslims and non-Muslims alike. And I will just to
16 continue, if you don't mind, another portion of that as well is if
17 you see the famous or infamous Reuters footage where the Reuters
18 reporter was unfortunately targeted, what they've extrapolated out of
19 that is a message that the United States is hypocritical, that it
20 does not value life and it does not particularly value Iraqi or
21 Muslim life and that what's also very powerful, from Al Qaeda's
22 perspective, is the image of that young boy that was in the van. And
23 of course, luckily, he survived the attack, but then they show the

1 young boy and his scars. So what Al Qaeda is able to portray is,
2 "See, not only does the United States not value life, but this could
3 be your child. When are you going to get off the fence, when are you
4 going to understand and join our cause, join our -- and be
5 sympathetic to our cause," is the message they're trying to portray
6 with that video.

7 Q. What is your opinion on the effect that propaganda will
8 have on recruitment?

9 A. Well, when you look at previous statements either --
10 previous incidents with the Little Rock recruiting incident in Little
11 Rock or the Major Hasan, Fort Hood shooting, this -- the narrative is
12 extremely important in order to give kind of a coherence, if you
13 will, to their acts.

14 Q. Sir, how has Insp ----

15 ADC[CPT TOOMAN]: I'm sorry, Captain von Elten ----

16 MJ: Yes?

17 ADC[CPT TOOMAN]: Ma'am, we object to those two instances that
18 he used -- that Commander used under 1001(b)(4).

19 MJ: Got it.

20 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

21 Q. How has Inspire Magazine used specific names?

22 A. Inspire Magazine has, for instance, mentioned officials,
23 U.S. officials, U.K. officials. It is mentioned individuals who are

1 involved in the U.S. and U.K. government specifically and I think the
2 issue there is to provide kind of an implicit threat to them. Not an
3 explicit one, but an implicit one.

4 Q. Has *Inspire* Magazine used names cited to WikiLeaks?

5 A. They have use images from WikiLeaks and, of course,
6 associated with names. Like for instance, I believe in that 2011
7 video you have images of General Kayani, I want to say, sitting down
8 with General Petraeus.

9 Q. What is the implicit ----

10 ADC[MAJ HURLEY]: Your Honor ----

11 MJ: Yes?

12 ADC[MAJ HURLEY]: --- I'm sorry to interrupt. Ma'am, 1001(b)(4)
13 to any of the individuals threatened that weren't actually listed and
14 identified as being listed in the WikiLeaks disclosures. Let me move
15 up here. He talked generally about *Inspire* Magazine being used to
16 threaten U.S. and U.K. officials. If those officials weren't
17 identified in the WikiLeaks disclosures by picture or specifically
18 identified as being part of that, then we would object to that under
19 1001(b)(4).

20 MJ: Got it.

21

22

23

1 Questions continued by the assistant trial counsel [CPT von ELTEN]:

2 Q. Can you explain in more detail how they were identified?

3 A. They were identified by photo, by name, in *Inspire Magazine*
4 and in the video.

5 Q. And what was the connection with WikiLeaks?

6 A. They in the case of the 2010 and 2011 media outlets, if you
7 will, instruments, they specifically mentioned the use of WikiLeaks
8 cables in the context of the naming of the individuals.

9 Q. What is the implicit threat you just testified about?

10 A. Well, an implicit threat is to get individuals to either
11 bear either latent hostility towards those officials or, even better
12 yet, from an Al Qaeda perspective, carry out an actual attempt at a
13 disruption or assault on them, is the implicit threat.

14 Q. Sir, let's talk a little bit about the Manchester Document.
15 What are the Manchester Documents?

16 A. The Manchester Document is an Al Qaeda training manual that
17 was discovered in 2000 in Manchester England, Manchester, U.K. And
18 what's interesting about the Manchester Document is it's basically an
19 Al Qaeda training manual that details special force -- U.S. Special
20 Forces style operations, training, ----

21 MJ: Yes?

22 WIT: ---- it details intelligence collection ----

1 ADC[MAJ HURLEY]: Pardon me, Commander Aboul-Enein. Ma'am, we
2 would object to this entire line of questioning. We believe you need
3 to do an offer of proof or let the court hear it -- and all of this
4 is under 1001(b)(4), offer of proof or let the court hear the
5 information.

6 MJ: Okay, I'll hear the information. I have your objection.
7 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

8 A. The Manchester Training Document, like I said, is an Al
9 Qaeda training manual and what's interesting about the Manchester
10 Training Documents -- and there are various versions of them, first
11 of all, but the one discovered in 2000 is actually linked to special
12 -- U.S. Special Forces manuals that were provided by Sergeant Ali
13 Mohamed in 1989.

14 Q. Sir, let's come back to that in a moment. What type -- you
15 mentioned special forces information. What -- can you be a little
16 more specific about what ----

17 A. Sure.

18 Q. ---- that information ----

19 A. They were John Kennedy Special Forces School Training
20 Manuals and also techniques that Sergeant Mohamed had learned while
21 in the United States Army.

22 Q. What kind of military techniques were described?

1 A. Well, reconnaissance, how to set up a perimeter, how to
2 walk a perimeter, how to ----

3 ADC[MAJ HURLEY]: I'm sorry to interrupt, ----

4 MJ: Hold on just a moment.

5 ADC[MAJ HURLEY]: ---- ma'am. But relevance objection again.

6 MJ: What is the relevance of this?

7 ATC[VON ELTEN]: The relevance is foundation for types of
8 information Al Qaeda is interested in.

9 MJ: All right. I have your objection.

10 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

11 A. Intelligence collection techniques. It is pretty much what
12 you could -- what you find in a basic special forces training manual,
13 it was -- that was found in the Manchester Training Diaries.

14 Q. And sir, how did Al Qaeda obtain it?

15 A. Al Qaeda obtained it through, like I said, Sergeant Ali
16 Mohamed who was in the U.S. Army at the time. He had enlisted in the
17 U.S. Army and he provided that around 1989.

18 Q. And how do you know that fact?

19 A. My understanding is that Sergeant Ali Mohamed case had been
20 adjudicated and that came out in the actual adjudication process.

21 Q. Sir, let's talk a little bit about significant activity
22 reports. Are you familiar with SIGACTS?

23 A. I am.

1 Q. How are you familiar with them?

2 A. One of them -- one of my responsibilities in OSD Policy was
3 to track overall, strategically, the casualty rates in Iraq and
4 Afghanistan and sometimes when one sees spikes in that -- regrettable
5 spikes in that, one has to occasionally refer to SIGACTS to see what
6 the anomaly may be.

7 Q. Generally speaking, what types of information are in
8 SIGACTS?

9 A. Oh, my gosh. Like I said, significant activities reports.
10 So if a Soldier for that -- Soldier, Marine, or Sailor is walking in
11 the field or patrolling in the field and they engage in any kind of
12 event that they consider significant, it makes an inter-significant
13 activities report. This includes, for instance, engaging the
14 adversary. That may include the discovery of an IED, the diffusion
15 of an IED. All of that would make it into a significant activity
16 report.

17 ADC[MAJ HURLEY]: Ma'am, our objection is continues into this
18 line of questioning. 1001(b)(4).

19 MJ: Okay. Got it.

20 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

21 A. So, like I said, it's a very, very tactical document, raw
22 and tactical document through the perspective of the U.S. Combat
23 Soldier.

1 Q. Sir, have you seen Al Qaeda express interest in this
2 information?

3 A. The -- what's interesting is that in *Inspire* Magazine, in
4 the 2010 edition we were discussing, in the back of that magazine it
5 says that if you supportive of Al Qaeda you can help us by providing
6 us information from WikiLeaks. Because the amount of information is
7 so voluminous they require outside analytic support from their
8 supporters on the cyber domain.

9 Q. In your opinion, how will Al Qaeda use this information?

10 A. Well, based on how they used Sergeant Ali Mohamed's
11 materials and based on how, for instance, Al Qaeda had used Soviet
12 military manuals during the Soviet/Afghan war, one can only deduce
13 from that that out of the thousands of SIGACTS that has been leaked,
14 that they could possibly potentially basically deduce a pattern of
15 behavior of U.S. combat forces.

16 Q. And in your -----

17 ADC[MAJ HURLEY]: I'm sorry, ma'am ----

18 MJ: Yes?

19 ADC[MAJ HURLEY]: Ma'am, we'd also add speculative -- overly
20 speculative and beyond the scope of his expertise.

21 MJ: Got it.

22 ATC[VON ELTEN]: May I have one moment, Your Honor?

23 MJ: Yes.

1 [There was a pause while the trial counsel conferred at the counsel
2 table.]

3 **Questions continued by the assistant trial counsel [CPT von ELTEN]:**

4 Q. Sir, let's talk a little more about the internet. How does
5 Al Qaeda spread information on the internet?

6 A. Through websites, through chat rooms.

7 Q. How would Al Qaeda use significant activity reports if
8 they're in English?

9 A. Well, just in the cyber domain, really, language is not a
10 barrier. Since you're in the cyber domain, you can find an Al Qaeda
11 supporter in the United States, in the U.K. and they can then take,
12 like -- I'm speculating, but take Al Qaeda's admonition in *Inspire*
13 Magazine to help in processing the voluminous amount of information
14 and, from that, if they see SIGACTS that are of interest, they can
15 begin to piece together, like I said, a pattern of behavior that
16 shows how U.S. combat forces operate in the field.

17 ADC[MAJ HURLEY]: Now that his answer is over, ma'am, again our
18 objection would be beyond the scope of his expertise and speculation,
19 at that point.

20 ATC[VON ELTEN]: One moment, Your Honor.

21 [There was a pause while the trial counsel conferred at the counsel
22 table.]

23

1 Questions continued by the assistant trial counsel [CPT von ELTEN]:

2 Q. Sir, in your opinion, does Al Qaeda have the ability to use
3 English documents?

4 A. Yes.

5 Q. And why is that?

6 A. Like I said, because it's in the cyber domain. They've got
7 supporters that have a command of the English language, multi-
8 lingual, bi-lingual around the world. So, like I said, language is
9 not a barrier. It is very feasible for someone to be sitting in
10 Europe or sitting in the U.K. or in the Caribbean or the United
11 States, download the WikiLeaks information, and then deduce whatever
12 they want from it from their own analytic -- provide their own
13 analysis and then send it back to Al Qaeda supporters.

14 Q. Does Al Qaeda use propaganda in English?

15 A. Inspire Magazine is an example of that, yes. Anwar Al-
16 Awlaki, the late Anwar Al-Awlaki, was one of the creators of that,
17 masters of that.

18 Q. Who is Al Qaeda's English spokesman?

19 A. Currently, it would be Adam Gadahn.

20 Q. And what does Adam Gadahn do for Al Qaeda?

21 A. Adam Gadahn mainly is a mouthpiece. He's an English
22 language mouthpiece for Al Qaeda senior leadership.

23 ATC[VON ELTEN]: Thank you.

1 MJ: Cross-examination?

2 ADC[MAJ HURLEY]: Yes, ma'am. Ma'am, sir, just a second.

3 [There was a pause while the defense counsel conferred at the counsel
4 table.]

5 **CROSS-EXAMINATION**

6 **Questions by the assistant defense counsel [MAJ HURLEY]:**

7 Q. Sir, good afternoon.

8 A. Afternoon.

9 Q. Sir, since the disclosures, the WikiLeaks disclosures, the
10 following militant Islamists have been killed and I'm going to list
11 them out, okay? All right?

12 A. I'm sorry, say it again.

13 Q. Since the disclosures, the following militant Islamists
14 have been killed and I'll list them out sequentially. All right?
15 You have to answer yes or no, sir, for the record. Osama Bin Laden,
16 he's been killed?

17 A. Yes.

18 Q. And that -- his death occurred on the 1st of May 2011?

19 A. That's correct.

20 Q. Anwar Al-Awlaki has also perished?

21 A. Yes.

22 Q. And his death occurred when?

1 A. I don't have the exact date, but I'm thinking around 20 --
2 early 2011.

3 Q. And then there was a third person that we discussed in our
4 interview this morning, sir. His name, do you recall?

5 A. You mean the number three in Al Qaeda?

6 Q. Yes.

7 A. I mean Attyah.

8 MJ: Excuse me?

9 **Questions continued by the assistant defense counsel [MAJ HURLEY]:**

10 Q. And, sir, could you spell that?

11 A. I'm sorry, Attyah Abdel-Rahman. A-T-T-Y-A-H, Abdel-Rahman,
12 A-B-D-E-L, dash, R-A-H-M-A-N.

13 Q. And all of these individuals were killed because of their
14 status as Al Qaeda leaders?

15 A. These are Al Qaeda senior leaders. In the case of Attyah,
16 he was the operations chief for Osama Bin Laden.

17 Q. So part of the strategic leadership for Al Qaeda?

18 A. Yes.

19 Q. And before we go any further, I want to define some terms
20 just so we all have a clear understanding during this examination.

21 All right?

22 A. Sure.

1 Q. A militant Islamist -- these are words that I got from you,
2 "They're trying to create a caliphate in their image with the use of
3 force;" is that correct?

4 A. Yes, I would say that's correct. A militant Islamist is
5 someone who is trying to create an Islamic social order in their
6 image through violence or conspiracy to commit acts of violence.

7 Q. And an Islamist is essentially the same thing, trying to
8 create a caliphate in their own image?

9 A. In their various images.

10 Q. But without, necessarily, the use of force?

11 A. That's correct. Yes, methodologies and so forth.

12 Q. Militant Islamist, that's a term that you coined?

13 A. It's a term I use in my book, yes. Militant Islamist
14 Ideology.

15 Q. And you believe that to be the most precise term when
16 describing these individuals?

17 A. It's the best term or best model I could come up with
18 because, after all, you're talking about 1.5 billion Muslims. That's
19 one-fifth of humanity. So you have to reduce that complexity and
20 nuance. Not everyone agrees on what a social order should look like.
21 Not everyone agrees that there should be a social order or a
22 government.

1 Q. And, sir, apostates from the version of these militant
2 Islamists, are both Muslims don't agree with their world view as well
3 as westerners that don't subscribe to the Muslim religion?

4 A. I would say that's accurate, yes.

5 Q. And infidels or just westerners that don't subscribe at all
6 to the Muslim ----

7 A. Yes. It's ----

8 Q. ----- Muslim religion?

9 A. ---- a nuance in the English language, yes.

10 Q. And this group of militant Islamists, obviously Al Qaeda is
11 part of that -- is a militant Islamist organization?

12 A. Yes, Al Qaeda ----

13 Q. And ----

14 A. ---- is militant Islamists.

15 Q. And Al Qaeda in the Arabian Peninsula is also a militant
16 Islamist organization?

17 A. Yes, it is.

18 Q. And sir, in -- with the rest of these questions, I'm going
19 to treat these organizations as distinct, okay?

20 A. Okay. For -- the reason I'm stumbling a bit is because in
21 the last week, Ayman Al-Zawahri naming Nasir Al-Wuhayshi, the leader
22 of AQAP, as his deputy, the lines are beginning to become less
23 distinct.

1 Q. Is it all right if I refer to both organizations as
2 distinct during this examination?

3 A. I think it would be fine.

4 MJ: Before you proceed, could you spell that last name for the
5 court reporter?

6 WIT: I'm sorry. Nasir Al-Wuhayshi. Yes, Your Honor ----

7 ADC[MAJ HURLEY]: Thanks, ma'am.

8 WIT: ---- Nasir al-Wuhayshi. First name Nasir, N-A-S-I-R, last
9 name A-L, dash, W-U-H-A-Y-S-H-I.

10 MJ: Thank you.

11 ADC[MAJ HURLEY]: Thank you, sir.

12 **Questions continued by the assistant defense counsel [MAJ HURLEY]:**

13 Q. All right, sir. Thank you. And you indicated with Captain
14 von Elten on direct that propaganda is important to Al Qaeda?

15 A. Yes, it is.

16 Q. It's likewise important if we're treating them as distinct
17 organizations to Al Qaeda ----

18 A. Yes, it is.

19 Q. ---- in the Arabian Peninsula?

20 A. Absolutely.

21 Q. It's vital to their senior leadership, the propaganda's
22 vital?

23 A. It is, absolutely. Yeah.

1 Q. AQ senior leaders see propaganda sometimes as more
2 important than their actual on-the-ground operations?

3 A. Well I think it's best to even quote Zawahri's mentor. His
4 name is Imam Al-Sherif, a/k/a Dr. Fadl.

5 Q. Sir, could you please spell that name?

6 A. Sure. Imam Sharif is I-M-A-M, A -- then the last name Al-
7 Sherif, AL, dash, S-H-E-R-I-F and a/k/a Dr. Fadl -- doctor, of
8 course, and then F-A-D-L. Dr. Fadl. This is Zawahri's mentor. He's
9 actually since written four books attacking Zawahri, Bin Laden, and
10 Al Qaeda and in it he basically says that all Al Qaeda is the cult of
11 Osama Bin Laden and Zawahri and that every suicide bombing is
12 designed to do two things, media and money for those two. So that
13 shows the centrality of propaganda and media to Al Qaeda senior
14 leadership and operatives.

15 Q. Not only had Dr. Fadl come up with that conclusion, but
16 this morning, sir, you shared with me a similar conclusion that
17 sometimes you, yourself, think that Al Qaeda senior leaders see
18 propaganda as the only important function of their organization?

19 A. That is correct, yes.

20 Q. And that's to the exclusion of any other function?

21 A. Well, I mean, the violence in all of this is all designed
22 to create relevance for them and that relevance is obtained through
23 perception in media.

1 Q. Now, the dead militant Islamist that we talked about at the
2 top of this examination, they played an important role in this
3 propaganda function, did they not?

4 A. They did, yes.

5 Q. At least they played it while they were alive?

6 A. Yes.

7 Q. And their deaths had a temporary negative effect on the
8 propaganda?

9 A. Short-term.

10 Q. And how long did this, to use your words, "Short-term
11 negative effect," last?

12 A. Well, let's take one of the gentleman that you mentioned,
13 Anwar Al-Awlaki. He, obviously, is the producer. Him and Samir Khan
14 was producer of *Inspire* Magazine and there was -- when he was killed,
15 there was pause of several months before the next edition of *Inspire*
16 Magazine came out. So -- but he was instrumental in creating *Inspire*
17 Magazine.

18 Q. And his death was instrumental in delaying its further --
19 its ----

20 A. It delayed it, but ----

21 Q. ---- further publications?

22 A. ---- they still continued with the latest edition, I think,
23 covering the Boston bombings. And, by the way, the quality from my

1 -- again, my opinion, the quality of the latest edition of *Inspire*
2 still equals that of editions that were published by Al-Awlaki and
3 Samir Khan.

4 Q. There's just been one edition that that's been published
5 since?

6 A. To my knowledge, yes.

7 Q. Prior to all, of other editions were published during the
8 lifetime of ----

9 A. Awlaki and Samir Kahn.

10 Q. ---- Anwar Al-Awlaki?

11 A. Yes.

12 Q. Now, we're going to lean on your expertise with respect to
13 Militant Islamism. Militant Islamism -- militant Islamists, as a
14 matter of fact ----

15 A. Yeah.

16 Q. ---- they, to use your words, "See the wolrd as cyclical,"
17 don't they?

18 A. Yes, I would say that's not -- I wouldn't object to that.

19 Q. And the beginning of the cycle is a recognition themselves
20 as an organization and then -- sir, you have to answer yes or no just
21 for the purposes of the record.

22 A. Sure, yes.

1 Q. And once they recognize themselves as a distinction
2 organization, then they see the other ----

3 A. Yes.

4 Q. ---- as -- and this other is non-Muslim or certainly less
5 Muslim than the militant Islamists?

6 A. That's correct, yes.

7 Q. And that other must be stopped, if they're militant
8 Islamist, with combat?

9 A. That other, if you are on a receiving end would be Muslims
10 and non-Muslims alike who don't espouse to methodologies ----

11 Q. Right.

12 A. ---- to address the various grievances in the region.

13 Q. Right. And if you're viewing it from the militant
14 Islamist's perspective, then that other must be stopped?

15 A. That other must be persuaded, influenced, and, yes, it must
16 be violently addressed.

17 Q. And if not violently addressed, then at least in modern
18 times, through the use of propaganda?

19 A. Propaganda to undermine, ----

20 Q. Right.

21 A. ---- of course.

22 Q. And militant Islamists have already come to these
23 conclusions, have already seen the world in this cycle?

1 A. Yes.

2 Q. And they are searching for facts to support the conclusions
3 that they've already reached?

4 A. That's correct.

5 Q. So if it wasn't WikiLeaks, it would be something else?

6 A. Absolutely. Absolutely.

7 Q. Al Qaeda propaganda -- the propaganda machine from Al Qaeda
8 doesn't stop, does it?

9 A. No.

10 Q. *Inspire* Magazine kept going even though Al-Awlaki died?

11 A. That's correct.

12 Q. And Adam Gadahn, as you indicated with Captain von Elten,
13 he's the leading spokesperson for Al Qaeda?

14 A. Pardon me. He is perhaps one of more leading English
15 language spokespersons for Al Qaeda senior leadership.

16 Q. Certainly a public face of Al Qaeda?

17 A. Yes.

18 Q. And you read his public statements closely?

19 A. I do.

20 Q. And you analyze every word?

21 A. I try to.

22 Q. Has he said anything publicly about WikiLeaks in 2013?

23 A. 2013?

1 Q. [Affirmative Response.]
2 A. Not to my knowledge.
3 Q. How about 2012?
4 A. Not to my knowledge. The ----
5 Q. How about ----
6 A. ---- last time I saw anything from Adam Gadahn on WikiLeaks
7 was that 2011 video.
8 Q. So since the video he hasn't said anything else about
9 WikiLeaks that you've seen?
10 MJ: Yes?
11 TC[MAJ FEIN]: Your Honor, I apologize to Major Hurley. May we
12 have a brief 802?
13 MJ: Yes. Want to take a 10 minute recess?
14 TC[MAJ FEIN]: Yes, ma'am.
15 MJ: All right. Commander Aboul-Enein, please don't discuss
16 your testimony during the recess with anyone.
17 WIT: Yes, Your Honor.
18 MJ: Court is in recess for 10 minutes.
19 **[The court-martial recessed at 1253, 8 August 2013.]**
20 **[The court-martial was called to order at 1303, 8 August 2013.]**
21 MJ: The court is called to order. All present at the last
22 recess are again present in court. The witness is on witness stand.
23 Please proceed.

1 ADC[MAJ HURLEY]: Yes, ma'am.

2 **Questions continued by the assistant defense counsel [MAJ HURLEY]:**

3 Q. Sir, I believe the last answer you gave indicated that Adam

4 Gadahn hasn't said anything about WikiLeaks since disclosures first

5 happened; is that right?

6 A. Since 2011, the audio -- the video, I'm sorry, the video.

7 Q. The video ----

8 A. 2011 video.

9 Q. ---- in 2011?

10 A. Yes, to my knowledge.

11 Q. To your knowledge? To your knowledge, has anyone else from

12 Al Qaeda mentioned WikiLeaks since that time period?

13 A. Not to my knowledge, no.

14 Q. And again, treating these organizations as distinct, has

15 anyone from Al Qaeda from the Arabian Peninsula ever said anything

16 about WikiLeaks other than *Inspire Magazine*?

17 A. Other than *Inspire Magazine* in 20 -- in winter 2010, no,

18 not to my knowledge.

19 Q. So let's talk about the SIGACTS, the information that you

20 discussed with Captain von Elten. And you have seen SIGACTS as a

21 general proposition?

22 A. I have, yes, sir.

23 Q. And you have analyzed them in detail?

1 A. I have analyzed those that have come -- that I had to
2 analyze ----

3 Q. Now ----

4 A. ---- in the course of my work.

5 Q. From your perspective, this information would all -- that
6 information that you've analyzed, those SIGACTS that you've analyzed
7 in the capacity of your work from 2002 to 2006, that's what I'm
8 talking about, that if the -- if militant Islamists had seen that
9 information or were privy to that information, they would use it in
10 the course of their organization's business?

11 A. I would have to assume that. If that were made available
12 to them, like I had mentioned previously, what has happened -- what
13 one can do with this -- with the thousands of SIGACTS, if you will,
14 or if you have hundred or a couple of thousands of them is you can
15 begin to deduce a pattern of behavior of how U.S. combat forces
16 operate in the field. You can then go from there developing either
17 counter measures to those -- to those operating procedures or you can
18 develop ambushes against U.S. combat forces or just understand how
19 the U.S. combat forces operate in the area and emulate that kind of
20 technique.

21 Q. Certainly, sir, there's a couple of things I would want to
22 talk about that with respect to that. The first is that process that
23 you're talking about with respect to the WikiLeaks disclosures, the

1 information from WikiLeaks, that's a speculation on your part,

2 correct?

3 A. Yes, it is. Yes.

4 Q. You haven't seen any reporting that indicates that that has
5 happened?

6 A. I have not, no.

7 Q. All right. So now, we've talked a couple of times before
8 this conversation that we're having today, right, sir?

9 A. We have, yes.

10 Q. One was today, earlier today?

11 A. Yes, it was.

12 Q. And one was probably in January of this year?

13 A. I believe so, yes, in the wintertime.

14 Q. Now, in January of this year, you walked through the
15 process that these militant Islamists would use?

16 A. [Affirmative response.]

17 Q. And the first is they would gather the information that
18 they did not have already, right?

19 A. [Affirmative response.]

20 Q. And, sir, it's got to be a yes or no because of the court
21 reporter.

22 A. Yes, certainly

1 Q. Thank you. And they would -- off of that information, they
2 would formulate a lesson plan or they would formulate a counter
3 measure of some ----

4 A. Certainly. Develop training manuals, if you will, or
5 training ----

6 Q. Right. So ---

7 A. ---- information. Keep in mind, of course, you are still
8 subject to the person conducting that analysis.

9 Q. Right ----

10 A. Yeah.

11 Q. ---- and their own human frailties, whether it's difficulty
12 with language or whatever?

13 A. Yes. And, now, since we're going -- the only precedent we
14 have, to my knowledge, is the Manchester Training Manual and, of
15 course, the use of Soviet and Russian manuals during the
16 Soviet/Afghan war. That is the model I provided you based on that.

17 Q. Right, sir. Now, as they're formulating, this individual
18 -- and this is a hypothetical individual that we're talking about,
19 right?

20 A. Sure.

21 Q. This hypothetical individual, as he formulates his lessons
22 plans, he's not just going to rely on this new information he's got,
23 right?

1 A. Yes, that's correct. He's not going to rely on just that
2 information.

3 Q. Just that?

4 A. Sure.

5 Q. He's going to rely on his own personal experience?

6 A. That personal experience and now that we're in the cyber
7 domain and a post 9/11 world, now he has access to various
8 experiences from various battlefields ----

9 Q. Right.

10 A. ---- from Somalia to Iraq to Afghanistan.

11 Q. And not only is he going to sample all of that, but he may
12 do face-to-face coordination with other people -- with other members
13 of the organization to share lessons learned?

14 A. He -- it is plausible, yes. Face-to-face coordination is
15 plausible, yeah.

16 Q. Just more difficult based on the operating environment?

17 A. It's more difficult due to the op-tempo currently, yes.

18 Q. And that process, whether the new information, this new
19 data, came from WikiLeaks or wherever, that same process would be in
20 place, correct? That he would take a look at his own lesson plan,
21 filter it through his own experience and then the experiences of
22 others as best he can understand them?

1 A. Of course, yes. And like I said, Major Hurley, this is a
2 model I'm trying to give you so you can conceptualize how this raw
3 data can then be turned into, I should say, usable information by the
4 adversary.

5 Q. And sir, since we talked about the Manchester Documents a
6 little bit, let's go into that just a little bit more. So the
7 Manchester Document is basically a handbook for terrorist leaders?

8 A. It's a handbook for terrorist operatives.

9 Q. Operatives?

10 A. Right.

11 Q. And I'll go back to the militant Islamist ----

12 A. Right.

13 Q. ---- instead of the word terrorist because of its overbroad
14 nature.

15 A. If you want to be specific, the Manchester Training Manuals
16 was an Al Qaeda operations training manual. But since it's in the
17 open domain, one has to assume that other terrorist organizations can
18 also download it and utilize as well.

19 Q. Now, the Manchester Document, you indicated to Captain von
20 Elten that there are several versions online of that document?

21 A. There are several versions both in paper and online, yes.

22 Q. And you indicated in our conversation earlier today that
23 the one that you looked at was around two hundred pages?

1 A. About that, yeah.

2 Q. And you've seen shorter versions ----

3 A. I have.

4 Q. ---- of that document?

5 A. Yes, certainly, pieces of it. I've seen one -- I've even
6 seen some that have been developed into kind of lesson plans where
7 it's obvious it's only the person delivering the lesson has these
8 short notes.

9 Q. Right.

10 A. Yeah.

11 Q. And one of the lessons that you can derive from the
12 Manchester Document is how to assemble a weapons cache?

13 A. How to assemble a weapons cache, sure, yeah. How to hide a
14 weapons cache.

15 Q. And another suite of instructions that are given through
16 the Manchester Document is how to respond to being arrested?

17 A. Yes. Yes.

18 Q. And then it also discusses ----

19 A. Although, how to respond to being arrested is not something
20 that was inherent in the Ali Mohamed leak to manuals.

21 Q. The information that was inherent in the Ali Mohamed leaked
22 information work was, to use a broad expression, tactical operational
23 information, correct?

1 A. I'd say low level operations and tactical, yes.

2 Q. And those low level operations would be reconnaissance?

3 A. Correct.

4 Q. Engagement with an opposing force?

5 A. Correct.

6 Q. Ambush?

7 A. Yes.

8 Q. Use of ambush. And all of that was reflected generally in

9 the Manchester Document?

10 A. Correct.

11 Q. Now with respect to information gathering or just to ask

12 the question specifically, the Manchester Document also discusses

13 information gathering?

14 A. It does.

15 Q. And that's just another way of saying collecting

16 intelligence?

17 A. Yes, correct.

18 Q. And the Manchester Document that I reviewed indicated that

19 eighty percent of collection, intelligence collection, can be done

20 through the open source?

21 A. That's not an uncommon statistic among Al Qaeda operatives.

22 Q. And that's a generally held opinion ----

23 A. Yeah.

1 Q. ---- that they have?

2 A. It's to encourage their supporters and their operatives to

3 closely monitor the open source.

4 Q. Sir, as I understand from our conversations, you're a

5 native of Mississippi?

6 A. I was born in Mississippi. I was.

7 Q. And you've lived both in Muslim cultures and in the

8 American culture?

9 A. I grew up in Riyadh. Saudi capital's is my childhood home.

10 Q. Now, you're -- and you've lived in America most of your

11 adult life?

12 A. I have, yes.

13 Q. And apart from WikiLeaks, just to set that aside ----

14 A. Certainly.

15 Q. ---- the American government, the United States government

16 has a lot of information in the open source, right?

17 A. Sure, it does.

18 Q. And that news reports on the comings and goings of the

19 federal government?

20 A. Absolutely, to be expected in a transparent society.

21 Q. Military publications?

22 A. Yes, like Infantry, Armor, Military Review. These are all

23 open source documents.

1 Q. The breadth of what is in the open source with the
2 Manchester Document that you reviewed, that was even the subject of a
3 joke, right, in the Manchester Document?

4 A. I don't really catch your meaning, sir.

5 Q. There was a quote from President Truman or there's often
6 and attributed ----

7 A. There was, yes, in Manches ----

8 Q. ---- quote?

9 A. Yes, indeed.

10 Q. And could you give the court the gist of that quote?

11 A. Yes, indeed. Basically -- first of all, it's in the
12 context of Al Qaeda mocking, if you will, our open society and the
13 ease of access to information because of our transparent nation and
14 our democracy and their reference to Harry Truman is quite
15 interesting because it references an incident in American
16 presidential history where Harry Truman had an antagonistic
17 relationship with the press and had given a speech about wanting to
18 enact legislation to protect national security secrets on the eve of
19 the Cold War, if you will. So -- what's fascinating to me, studying
20 the Al Qaeda problem set is that, A, you would find that in an Al
21 Qaeda document and that they had taken an in interest in U.S.
22 presidential history and, of course, they synthesized their
23 viewpoints on that.

1 Q. Right.

2 A. Yeah.

3 Q. Thank you, sir. Have a couple more lines of questioning.

4 Sir, you keep in touch with what militant Islamists are discussing?

5 You stay up on that?

6 A. I do follow. I try to stay abreast, yes, indeed.

7 Q. And that's part of your duties ----

8 A. It is.

9 Q. ---- as an instructor and as an expert in this ----

10 A. Absolutely.

11 Q. ---- field?

12 A. Yes, it is.

13 Q. And militant Islamists do like to brag about their tactical

14 successes against the infidels, don't they?

15 A. They do.

16 Q. And not only like to brag it, they like to film it?

17 A. Yes, they do, for propaganda purposes and for training

18 purposes.

19 Q. Has Al Qaeda claimed any tactical successes because of the

20 information it acquired from WikiLeaks?

21 A. No.

22 Q. Has Al Qaeda in the Arabian Peninsula claimed any tactical

23 successes because of the information it acquired from WikiLeaks?

1 A. No.

2 Q. Sir, you understand what a damage assessment is?

3 A. I'm familiar with the term, yes, and the overall
4 methodology.

5 Q. Have you ever read one?

6 A. I think I have read one, yes.

7 Q. Do you understand its uses?

8 A. Yes.

9 Q. And a damage assessment could determine the benefit to
10 specific terrorist organizations?

11 A. Yes.

12 Q. So a damage assessment could indicate that Al Qaeda now has
13 X bit of information, right?

14 A. To determine that and also to determine the potential uses
15 of that information, yeah.

16 Q. Did you do a damage assessment in this case?

17 A. I did not.

18 Q. You were never asked to were you?

19 A. I was not asked, no.

20 ADC[MAJ HURLEY]: Sir, thanks. Ma'am, nothing further.

21 MJ: Redirect?

22 ATC[von ELTEN]: Yes, Your Honor.

23 [END OF PAGE]

REDIRECT EXAMINATION

Questions by the assistant trial counsel [CPT von ELTEN]:

Q. Sir, how does violence affect propaganda?

A. How does violence ----

Q. How do violent Al Qaeda attacks ----

A. Sure.

Q. ---- affect propaganda?

A. Basically, violence, first of all, puts the terrorist organization, if you will, on the media map. It basically allows them to reclaim some semblance of relevance and their cause, of course.

Q. How does Al Qaeda describe its -- what it perceives to be its tactical victories?

A. Any -- first of all, there are several tactical victories, if you will, for Al Qaeda, it's not just one. But if I were to choose one, I would probably think any kind of demonstration that the United States is withdrawing from a country or is leaving a country without its full objectives being met. And a classic example would be when Al Qaeda, for instance, made a lot of note that U.S. Forces has abandoned Somalia in 1993.

Q. Does Al Qaeda describe the basis of its attacks?

A. The basis of its attacks?

Q. The specific reason it attacks?

1 A. Yes. I mean, it basically says it attacks because, A, they
2 are trying to avenge, say for instance, Abu Ghraib, for instance or
3 sometimes they make attacks in order to avenge the killing of an Al
4 Qaeda leader. So these are all examples of Al Qaeda giving a
5 rationale as to why it's conducting an attack or reason, I should
6 say.

7 Q. Sir, you testified that the Manchester Documents were
8 comprised in 1989?

9 A. They were, yes.

10 Q. I believe you also testified they were recovered in 2000?

11 A. That's correct.

12 Q. Why did it take so long to find out?

13 A. Basically, it's important to understand, first of all, that
14 in 1989 Al Qaeda was not something that was well known to most
15 Americans, much less most Americans in the military and in the
16 defense, if you will, sphere, intelligence sphere in 1989. Really,
17 it's not until 199 -- this is an argument as to this, 1993 or --
18 actually, 1996 or 1998. In 1996, Osama Bin Laden, if you recollect,
19 does this declaration of Jihad against Jews and crusaders in 1996.
20 That's when Al Qaeda is becoming more and more -- it makes its
21 announcement, if you will. In 1998 with the bombings of the embassy
22 in Dar es Salaam -- Nairobi and Dar es Salaam, that's where more and

1 more where Bin Laden and Al Qaeda becomes much more well known among
2 more Americans.

3 Q. Sir, if any of the next few questions require a classified
4 answer, please let me know.

5 A. Sure.

6 Q. In an unclassified manner, what is your opinion on the
7 openness with which Al Qaeda conducts its activities?

8 A. The openness which ----

9 Q. Yes, sir.

10 A. ---- it conducts its activities? I would say that Al Qaeda
11 for its very survivability has to be clandestine in its operations,
12 tactics, and abilities. I wouldn't classify Al Qaeda as an open
13 organization or engaging in openness, if you will, except in its
14 strategic goals, if you will.

15 Q. Sir, in your opinion, does that clandestine nature play a
16 role in discovering the Manchester Documents years later?

17 A. Of course, them suppressing and hiding their activities.
18 And all of this would have an issue, if you will, as far as delaying
19 discovery.

20 Q. Sir, I want to talk a little about your publication. Have
21 you published United States government information in open source?

22 A. United States government information in open source?

23 Q. Yes, sir.

1 A. I have cited U.S. government documents in my book.

2 Q. And that book's unclassified?

3 A. Yes, it is and the documents are unclassified.

4 Q. Sir, have you ever published classified information in the
5 open source?

6 A. No.

7 Q. What's the difference between clas -- between that?

8 A. The difference is if one is writing an article even for a
9 journal like United States Army Infantry, Armor, or Military Review
10 or publishing a book like I did, it has to go through what is known
11 as a prepublication process. You have to get it cleared, both from a
12 security perspective as well as from a public release perspective.

13 Q. Sir, have you published classified documents for the United
14 States Government?

15 ADC[MAJ HURLEY]: Objection, relevance?

16 MJ: What is the relevance?

17 ATC[VON ELTEN]: Major Hurley brought out the availability of
18 open source information. I'm just going through the process of that
19 classified information isn't easy to use it.

20 MJ: I know that classified is not available in the open source.
21 So where do we need to go with it? Let's not. Sustained.

22 ATC[VON ELTEN]: Thank you, sir.

23 WIT: Thank you.

1 ADC[MAJ HURLEY]: I don't have any re-cross, ma'am.

2 MJ: All right.

3 **EXAMINATION BY THE COURT-MARTIAL**

4 **Questions by the military judge:**

5 Q. Sir, I just have one question. I just want to make sure I
6 understand your testimony. So other than the *Inspire* Magazine
7 article -- *Inspire* Magazine in 2010 and the Adam Gadahn video ----

8 A. It was a holistic video. Don't quote me on, ma'am, but I
9 believe it was like 120 minutes or so of ----

10 Q. Okay. So those are the two pieces of -- the two concrete
11 pieces of information that you're aware of where anything that was
12 disclosed by WikiLeaks that's involved in this case was on any kind
13 of Al Qaeda information of any sort?

14 A. And one last thing too, ma'am, and that is, of course --
15 now it's a matter of public record and that is Osama Bin Laden's
16 personal interest in WikiLeaks.

17 MJ: Okay. Thank you. Any follow up based on that?

18 ATC[VON ELTEN]: No, Your Honor.

19 ADC[MAJ HURLEY]: No, ma'am.

20 MJ: Temporary or permanent excusal?

21 ATC[VON ELTEN]: Temporary.

22 MJ: All right.

1 [The witness was temporarily excused, duly warned, and withdrew from
2 the courtroom.]

3 MJ: Do we have anything else for today?

4 TC[MAJ FEIN]: No, ma'am.

5 MJ: All right. I believe -- Defense, anything?

6 ADC[MAJ HURLEY]: No, ma'am.

7 MJ: Okay. I believe this morning we talked about starting time
8 tomorrow at 0930; is that correct?

9 TC[MAJ FEIN]: Yes, ma'am.

10 ADC[MAJ HURLEY]: Yes, ma'am.

11 MJ: Okay. So is there anything else we need to address before
12 we recess the court till 0930 tomorrow?

13 ADC[MAJ HURLEY]: No, ma'am.

14 TC[MAJ FEIN]: No, ma'am.

15 MJ: All right. Court is in recess until 0930.

16 [The court-martial recessed at 1322, 8 August 2013.]

17 [END OF PAGE]

1 [The court-martial was called to order at 0959, 9 August 2013.]

2 MJ: Court is called to order.

3 Major Fein, please account for the parties.

4 TC[MAJ FEIN]: Yes, ma'am. All parties present when the court
5 last recessed are again present with the following exceptions:
6 Captain von Elten is absent; Captain Morrow and Captain Overgaard are
7 present. Also, Mr. Chavez, court reporter, is absent and Mr.
8 Robertshaw's present.

9 MJ: All right. Thank you.

10 TC[MAJ FEIN]: Also, ma'am, as of 0905 this morning there were
11 five members of the media in the Media Operations Center, one
12 stenographer, one member of the media in the courtroom, thirteen
13 spectators in the courtroom, and no spectators in the overflow
14 trailer, although it will remain available all day.

15 MJ: All right. We have a witness scheduled this morning.
16 Defense, have you had enough time to interview the witness?

17 ADC[MAJ HURLEY]: Yes, ma'am.

18 MJ: All right. I have a list of defense witnesses that are
19 scheduled for next week. Are there any issue with their production?

20 TC[MAJ FEIN]: No, ma'am. The United States has been able to
21 contact each witness and expects no issues with them being -- showing
22 up each of those 3 days.

23 MJ: All right. Defense, do you agree?

1 ADC[MAJ HURLEY]: Yes, Your Honor.

2 MJ: All right. The court is prepared to rule of the defense
3 motion for appropriate relief under R.C.M. 1001(b)(4) with respect to
4 the objections to the testimony of Mr. McCarl and Mr. Pearson.
5 Following that we will address all of the new Appellate Exhibits that
6 have been filed and then we will call the witness.

7 On 8 August 2013, in accordance with the procedures
8 established in the court's ruling, defense motion for appropriate
9 relief under R.C.M. 1001(b)(4), Appellate Exhibit 639, the defense
10 filed eight objections to the testimony of Mr. McCarl and Mr.
11 Pearson. The defense objections were from testimony given in closed
12 session and the substance of the objections is classified. The
13 government complied a joint classified filing, including the defense
14 objections and the government responses to the objections, Appellate
15 Exhibit 644 Alpha. The unclassified redacted joint classified filing
16 is Appellate Exhibit 644 Bravo. The court's ruling on each objection
17 is as follows:

18 One, Two, and Six: This is evidence of risk of damage to
19 national security that is directly related to and resulting from PFC
20 Manning's offenses. It is admissible aggravation evidence under
21 R.C.M. 1001(b)(4). The testimony objected to in number Six is based
22 on Mr. McCarl's expertise, it is not speculation.

1 Three and Five: Evidence of correlation is not evidence of
2 causation of harm or the trend of increasing harm began prior to
3 WikiLeaks public disclosures of the information given PFC Manning.
4 This evidence is not directly related to and resulting from PFC
5 Manning's offense. It is not admissible aggravation evidence under
6 R.C.M. 1001(b)(4) and M.R.E. 403.

7 Objection Six: WikiLeaks disclosures of information given
8 by PFC Manning occurred before the harm identified in this objection
9 occurred. Unlike in Four and Five above, the evidence of correlation
10 between the WikiLeaks disclosure and the harm caused is
11 circumstantial evidence that PFC Manning's offenses were a proximate
12 cause of the harm. This is evidence that is directly related to or
13 resulting from PFC Manning's offenses. The evidence is admissible
14 under R.C.M. 1001(b)(4).

15 Seven and Eight: The court admitted Prosecution Exhibit
16 203 under Military Rule of Evidence 803(8), Sections A and B. The
17 public records exception to the hearsay rule. The exhibit is offered
18 for the truth of the matter asserted. The analysis and the
19 translations made by Mr. Pearson in the report are admitted for the
20 truth of the matter asserted. The examples of information pulled
21 from websites on pages 00527699 through 00527708 are not admissible
22 for the truth of the matter asserted but are admissible as evidence

1 of how the entities at issue were using the information released by
2 WikiLeaks and how they would access that information.

3 Prosecution Exhibit 203 to include information attributable
4 to WikiLeaks is relevant and is proper aggravation evidence. It is
5 directly related to and resulting from PFC Manning's offenses. The
6 exhibit is admissible under R.C.M. 1001(b)(4).

7 M.R.E. 403 analysis: the probative value of those portions
8 of the testimony and evidence ruled as admissible as aggravation
9 evidence under R.C.M. 1001(b)(4) is not substantially outweighed by
10 the danger of unfair prejudice under Military Rule of Evidence 403.
11 The court has limited the scope of the testimony and evidence to
12 matters directly related to or resulting from PFC Manning's offenses.
13 So ordered this 9th day of August 2013.

14 And that will be the next Appellate Exhibit in line.

15 ADC[MAJ HURLEY]: Ma'am, if I may. The groups that you had, I
16 may have misunderstood this as the court was reading, One, Two, and
17 Six is the first group? Three and Five ----

18 MJ: Well, I don't have the exhibit in front of me ----

19 ADC[MAJ HURLEY]: Okay.

20 MJ: The court reporter has it.

21 ADC[MAJ HURLEY]: I'm sorry, ma'am. So first one ----

22 MJ: One, Two, and Six is the first one. Three and Five is the
23 second one. Oh, I see, I've got two Six's.

1 ADC[MAJ HURLEY]: So Four is the second Six, essentially.

2 MJ: Let me look at the -- what I'll do is -- let me clarify

3 that. I'll take this ruling back with me and do that. Might -- I

4 may have just made a transposition of numbers. But, what's the --

5 actually let me see the exhibit that you initially filed with the

6 objections and I can clear this up now.

7 ADC[MAJ HURLEY]: Ma'am, that's a classified exhibit, I think,

8 or let me move over closer to a microphone, as I understand it, that

9 Appellate Exhibit is classified ----

10 MJ: It is.

11 TC[MAJ FEIN]: We can have it grabbed.

12 MJ: Excuse me?

13 TC[MAJ FEIN]: We'll have it grabbed right now, ma'am, from the

14 State.

15 MJ: Okay.

16 TC[MAJ FEIN]: And brought out to you.

17 **[There was a pause while the AE was retrieved and brought to the**

18 **military judge for inspection.]**

19 MJ: Major Hurley, I'll confirm with the exhibit, but just

20 looking at the ruling, Three and Five are number 2. And I think

21 that's right. Number -- the one following that is number 4 and it

22 should be -- I'll double-check with the exhibit. And then it should

1 be unlike Three and Five above. So just Four would be separate. But

2 ----

3 ADC[MAJ HURLEY]: And ----

4 MJ: ---- let me double-check.

5 ADC[MAJ HURLEY]: And, ma'am, the defense has no problem. We
6 would wait until a recess or whenever appropriate time the court
7 would like, it doesn't have to occur now.

8 MJ: All right. So why don't we do that. I'll double check
9 with the exhibit and confirm and then fix the typo in the ruling and
10 we'll go forward from there.

11 ADC[MAJ HURLEY]: Yes, ma'am. Thank you.

12 MJ: Okay. So after I fix the typo, we'll have it as the next
13 Appellate Exhibit in line. Although, here comes the exhibit.

14 **[There was a pause while the military judge reviewed the exhibit.]**

15 MJ: Yes, the correct grouping is, number one would be One, Two,
16 and Six. The second bullet would be Three and Five. The third
17 bullet instead of Six is Four. And it would be unlike Three and Five
18 above. And I will fix that and we'll have the correct numbers in the
19 written ruling.

20 ADC[MAJ HURLEY]: Yes, ma'am. Thank you.

21 MJ: And thank you for bringing that to my attention. There
22 have been a number of Appellate Exhibits that have been filed since

1 yesterday. Major Fein, would you like to set those forth for the
2 record.

3 TC[MAJ FEIN]: Yes, Ma'am. First, Your Honor, Appellate Exhibit
4 646 is the prosecution's request to substitute photographs for
5 certain physical evidence on the record of trial dated 9 August 2013.
6 Appellate Exhibit 647, the defense's specific objections under R.C.M.
7 1001(b)(4) for Commander Aboul-Enein's testimony, dated 8 August
8 2013. Appellate Exhibit 648 is prosecution's response to the
9 defense's specific objections under R.C.M. 1001(b)(4) for Commander
10 Aboul-Enein dated 8 August 2013.

11 MJ: Wait a minute. You said the prosecution response to ----

12 TC[MAJ FEIN]: The defense's specific objections. So it's the
13 prosecutions response to Appellate Exhibit 647.

14 MJ: My copy has this marked as Appellate Exhibit 647. Is there
15 something not correct about this?

16 TC[MAJ FEIN]: May I have a moment, Your Honor?

17 **[There was a pause while the trial counsel conferred at the counsel**
18 **table.]**

19 Apologize, ma'am. Again the originals have been marked 64
20 -- Appellate Exhibit 646 is as previously stated, the prosecution's
21 request to substitute photographs for physical evidence, dated 9
22 August. Appellate Exhibit 647 is the defense specific objection to
23 R.C.M. 1001(b)(4) for Commander Aboul-Enein. 64 -- Appellate Exhibit

1 648 is the prosecution's response to the defense specific objection
2 under R.C.M. 1001(b)(4) for Commander Aboul-Enein. And Appellate
3 Exhibit 649 -- And Your Honor, I also missed one that prev -- or
4 Appellate Exhibit 645, that is the government's motion for
5 Appropriate Relief for mental health records, that's Appellate
6 Exhibit 645. And then Appellate Exhibit 649 is an email from the
7 defense to the prosecution outlining the basis of Commander Moulton's
8 testimony as they see it. And that's been marked, Your Honor, as
9 Appellate Exhibit 649.

10 MJ: Okay. I'm just going to ask you to take a look at my copy.
11 Maybe that just was handwritten or something incorrect.

12 TC[MAJ FEIN]: Yes, ma'am.

13 MJ: All right. I think it's just my copy that was mis-
14 numbered. So we'll change that to 648. Let's begin with the
15 prosecution's request to substitute photographs for certain physical
16 evidence in record of trial 646. Defense, any objection?

17 CDC[MR. COOMBS]: No, Your Honor.

18 MJ: All right. In that case the prosecution motion to -- or
19 request to substitute photographs for the physical evidence that's
20 attached, as the photographs attached, is granted. The prosecution
21 response to defense specific objections under R.C.M. 1001(b)(4) for
22 Commander Youssef Aboul-Enein, the Court will take that under
23 advisement. I have the defense's objections and will issue a ruling

1 probably at sometime today. Now, I have the government motion for
2 appropriate relief, mental health records, Appellate Exhibit 645 and
3 defense's corresponding email. And that was Appellate Exhibit 649.
4 Counsel and I briefly met in an R.C.M. 802 conference earlier before
5 coming on the record today. I believe the parties advised me that
6 what really is at issue here is the -- whether the defense has to
7 produce the long form R.C.M. 706 board to the government, if they
8 call one of their witnesses, Dr. Moulton, on Wednesday and whether he
9 can testify about certain statements made by the accused. Is that at
10 the end of the day the underlying issues?

11 TC[MAJ FEIN]: Yes, ma'am. But that's assuming after we confirm
12 with Dr. Moulton that the basis of his testimony is what has been
13 provided and we get the remaining material, such as his notes -- his
14 interview notes from him. That would be the only remaining.

15 MJ: All right. Defense, any other remaining issues?

16 CDC[MR. COOMBS]: I don't believe so, Your Honor.

17 MJ: I have the email from the defense. I asked the defense to
18 provide the court a written filing over the weekend. And the Court
19 will consider the filings, as well as cases provided by the parties.
20 And we'll have oral argument on this motion on Monday morning. And
21 the Court will issue a ruling -- this witness isn't scheduled to
22 testify until Wednesday, so the Court will issue a ruling in advance

1 of his testimony. Is there anything else we need to address before
2 we call the witness?

3 TC[MAJ FEIN]: No, ma'am.

4 CDC[MR. COOMBS]: Not from the defense, ma'am.

5 MJ: Does either side wish to add anything further to what we
6 discussed in the R.C.M. 802 conference?

7 CDC[MR. COOMBS]: No, ma'am.

8 TC[MAJ FEIN]: No, ma'am.

9 MJ: Please call the witness.

10 ATC[CPT MORROW]: Your Honor, United States calls Rear Admiral
11 Kevin Donegan.

12 REAR ADMIRAL KEVIN DONEGAN, U.S. Navy, was called as a witness for
13 the prosecution, was sworn, and testified as follows:

14 DIRECT EXAMINATION

15 Questions by the assistant trial counsel [CPT MORROW]:

16 Q. Sir, you are Rear Admiral Kevin Donegan, Director Warfare
17 Integration, Pentagon?

18 A. That's correct.

19 Q. And sir, how long have you been the Director of Warfare
20 Integration?

21 A. A little over a year.

22 Q. And what is Warfare Integration?

1 A. Warfare Integration is a position on the Navy Staff where
2 we integrate the budget of four of our warfare areas into what would
3 be a cohesive plan so that we can get the best and most for our
4 money. It's responsible for about a \$90 billion a year portfolio.

5 Q. And, sir, what are your general responsibilities in that
6 position?

7 A. I oversee -- I coordinate with the -- with four specific
8 warfare areas to take their individual portfolios where they balance
9 their budget, but then bring them in and work across the entire Navy
10 to ensure that we will get, when we put it all together, the best
11 force that we can get. So that effort takes a lot of back and forth
12 and coordination across a large staff.

13 MJ: Before you continue. You said you coordinate with four
14 warfare somethings. What was the "something?"

15 WIT: I -- warfare areas.

16 MJ: Areas. Okay.

17 WIT: So in the Navy we break down our portfolios by warfare
18 areas. Aviation would be one and surface warfare would be another,
19 for instance.

20 MJ: Thank you.

21 **Questions continued by the assistant trial counsel [CPT MORROW]:**

22 Q. And sir, prior to taking the position as Director of
23 Warfare Integration for the Navy, where were you assigned?

1 A. I was assigned to U.S. Central Command as the Director of
2 Operations.

3 Q. Is that the J-3, sir?

4 A. That's called the J-3, that's correct.

5 Q. And, sir, how long were you in CENTCOM J-3?

6 A. I was a J-3 for a little over 2 years.

7 Q. So approximately May 2010 to June 2012?

8 A. That's correct.

9 Q. And, sir, broadly what were your responsibilities as the
10 Director of Operations for CENTCOM?

11 A. They are relatively large. The CENTCOM area of
12 responsibility is 20 countries and extends from Egypt all the way
13 through the Kazakhstan and includes a large portion, as you know, of
14 the Middle East, with the exception of Israel. And my job as
15 Director of Operations was to be responsible for the direction --
16 directing operations across all those countries, and particularly, in
17 addition, we had two areas of hostility for a majority of the time
18 that I was there, one in Iraq and one in Afghanistan. So we would
19 also be responsible for the direction of operations in those areas,
20 although we would do that through another four star commander that
21 was subordinate to us.

22 Q. So, sir, in the places where there weren't geographic
23 commanders, for example, Iraq and Afghanistan, what was CENTCOM's

1 role and what was your role, in particular, as a J-3 in those areas,
2 in terms of overseeing operations?

3 A. And I wouldn't call those geographic commanders. They were
4 commanders of task force or operations. CENTCOM is the geographic
5 commander. We'd also oversee operations in all the other countries
6 running from security cooperation, humanitarian assistance, disaster
7 relief to counter-terrorism operations. And they run the gamut. So
8 each of those countries we would have varying degrees of levels of
9 operations, some training and assistance, security force training
10 with other countries, some direct partnering with them and
11 counter-terrorism operations and depending on what country is the
12 depth and level of operations we'd be directing.

13 Q. And, sir, with respect to Iraq and Afghanistan did your
14 travel forward at all as part of your responsibilities for operations
15 in CENTCOM?

16 A. I did. We had a forward headquarters based in Qatar and I
17 probably every 2 months, certainly not more than -- not than less
18 every 3 months, I'd go forward based out of that headquarters for an
19 operation, exercise and then move typically when I was there I would
20 visit either Iraq, Afghanistan, Yemen, or some of the other countries
21 that we have our operations going in.

22 Q. Yes, sir. And, sir, are you here today to discuss the
23 impact to operations within the CENTCOM AOR that you observed as a

1 result of the unauthorized release of WikiLeaks -- of information by
2 WikiLeaks?

3 A. I am.

4 Q. And, sir, we'll get back to your time at CENTCOM later, but
5 I'd like to talk about, you know, your career a little bit. How long
6 have you been in the Navy?

7 A. About 33 years.

8 Q. And, sir, what was your functional area or what was -- what
9 were you doing in the Navy initially?

10 A. I'm a pilot. I'm specifically an F18 pilot is how my
11 career started out.

12 Q. And, sir, what about -- can you sort of give the court a
13 flavor for your command assignments and your operation assignments.

14 A. I guess, you know, we don't necessarily specialize as
15 flight officers but we follow different career tracks. Mine's
16 concentrated pretty much on operationals -- or operations, control of
17 operations throughout my tenure. I had commands of four
18 organizations from a strike fighter squadron up through multiple
19 carrier task forces.

20 Q. Sir, what about other operational assignments, joint
21 operational assignments, other than CENTCOM?

22 A. I was -- I worked on the staff of a NATO command in Europe.
23 And then was also in Bosnia working for the United Nations Protection

1 Force coordinating their NATO air operations support before we had
2 U.S. troops there. So I was forward deployed to what was then
3 Sarajevo, which was not an embargoed city at the time.

4 Q. Yes, sir. And in your command assignments, did you have
5 the opportunity to deploy to CENTCOM AOR in those assignments?

6 A. In each of my ship going assignments I deployed to the
7 CENTCOM area of responsibility in almost each of those. So the
8 majority of my forward deployed time or if I wasn't in the Pacific, I
9 was in CENTCOM area of operations. When I was in command, my forces
10 supported Iraq and Afghanistan directly, our operations in Iraq and
11 Afghanistan.

12 Q. Yes, sir. Can you describe how the, sort of, process to be
13 selected as the J-3 at CENTCOM; is that a competitive process?

14 A. It's -- since it's a joint position and relatively
15 important, each service submits a nomination, a two-star general or
16 flag officer nomination to the joint staff for the position. And
17 then your records are reviewed and then you are selected in a process
18 the joint staff uses, but it's generally up to the CENTCOM Commander
19 who he chooses as J-3. At that time it was General Petraeus.

20 Q. And, sir, who are the other CENTCOM commanders you worked
21 for as your time as a J-3?

22 A. General Petraeus, was who was there when I got hired and
23 then he, after some months, went into Afghanistan and took over our

1 subordinate command in Afghanistan, which is U.S. Forces Afghanistan
2 and ISAF Command. And when he did that, the Deputy Commander,
3 General Allen, took over as the Commander of CENTCOM, I think it was
4 about 4 months, until General Mattis came in to take over as Director
5 of CENTCOM. So the line share of my portion of my time was working
6 for those three individuals.

7 Q. And, sir, approximately how many individuals were on your
8 staff as the Director of Operations at CENTCOM?

9 A. The staff just in the CENTCOM Headquarters was probably
10 about 300. But we had liaison officers in other parts of our
11 organization around. So I would say about 300 direct reports.

12 Q. And, sir, could you describe the operational tempo at
13 CENTCOM Headquarters when you were the J-3?

14 A. Yeah, that's pretty easy. It is very fast paced and busy,
15 and still is to this day, as you can imagine. At the time that I
16 took over as the J-3, of course, we had ongoing operations in Iraq. At
17 that time we were -- we had about a hundred thousand troops in Iraq
18 and we would then build some plans to draw down to fifty thousand and
19 eventually zero. We had a significant contingent in Afghanistan and
20 during my time there we plussed that up with the surge and
21 subsequently began a drawdown of those forces. And with those
22 operations going along, they were consuming but in addition we worked
23 the operations across the AOR. So a typical day would be around 7:00

1 a.m. intel ops fusion meeting that we have with my counterpart, which
2 is the J-2, where we go through all the operations that happened in
3 the past and what are ones are that are planned in the future and how
4 we are going to mutually support those. And then I'll go through a
5 series of meetings that are televideo conferences with either people
6 down range, Washington, very high levels in Washington, where we're
7 gaining approvals and authorities to conduct future operations or
8 giving status reports on current operations. We have daily meetings
9 with the Commander, if he's in the headquarters, if not, we would
10 have some contact with him throughout the day. In that pace would go
11 like that through quite an extensive workday. And then because there
12 is a time zone change, the downrange AOR is waking up about the time
13 we're going to bed here on the East Coast. So when I would go home,
14 I have the same communications suite in my home on the air force base
15 as I did at Headquarters. Because that work basically continued. I
16 didn't get much of a break and certainly didn't get much of a break
17 for weekends.

18 Q. And, sir, so you would stay in constant contact with the
19 operations folks even when you were home?

20 A. Yes. As a matter of fact, I would have weekly scheduled
21 televideo conferences with the operations folks in Iraq and
22 Afghanistan and my other subordinate operations. And then,
23 throughout the day, almost daily, I'd be contacting them or they

1 would be contacting me for the support they needed, for plans that we
2 were working on, for future plans, or some updates on current ops.
3 And then you're always going to get surprised because that is the
4 only certainty in CENTCOM, is there'll be a surprise. In our case it
5 could be a flood relief efforts in Pakistan to the Arab Spring
6 beginning and happened to reinforce an embassy in Egypt, which we'd
7 -- so those things are not scheduled. And anytime there would be a
8 moment of free time you generally, there's something you didn't plan
9 for that or that you had planned for and you have to break your plan
10 out that occurs.

11 Q. And, sir, can you describe just very briefly sort of the
12 difference between current operations and sort of J-5 -- what a J-5
13 would be doing with future operations or future planning?

14 A. Sure. On Headquarters staff there is probably, I mean, the
15 core team that works in support of the Central Command Commander is
16 the J-2 to J-3 and the J-5. J-2 does intelligence and J-3 does
17 current operations and future plans but out through 1 year. So my
18 plan team worked on all future plans out through 1 year and took the
19 baton pass from J-5 for the longer range plans at the 1 year point.
20 So if it was anything we were doing or going to do within a year,
21 then we were either planning it or executing it. And in terms of the
22 J-2, that's a very close tight team. Because we are mutually
23 supporting -- they have to know exactly what our game plan is so they

1 can be postured to support us with the best intelligence that we
2 possibly had. And also team with us in building our plans.

3 Q. Sir, can you describe how the staff would support you when
4 you were sort of at home or otherwise not necessarily in the
5 headquarters?

6 A. I have a full watch team that's 24/7, it's -- mans our JOC,
7 it's called a joint operations center. And that's overseen by an O6
8 Commander or a senior that manages the daily business of both reports
9 we get in but also tracks the current ops that were going in the
10 direction that we had planned for. And then, when we had those other
11 events that I talked about occur, we'll build a separate watch team.
12 Sometimes we call them a CAT team, which is a Crisis Action Team,
13 that would stand up to support that. For instance, if it was a flood
14 relief in Pakistan, we'd have Crisis Action Team stood up managing
15 that. If there was an uprising in Egypt and we were managing our
16 support of the Ambassador in the embassy we have a Crisis Action Team
17 supporting that. And if we were doing particular counter-terrorism
18 operations that were directed at the CENTCOM levels, and I have a
19 team, separate team working that, and area we called FPOG which is
20 just a room, but it's where we do those sensitive operations.

21 Q. And, sir, did the crisis -- when you had to set up a Crisis
22 Action Team, was that out of hide or did you have people that came in
23 to help?

1 A. No. But that is kind of a double duty thing. So the watch
2 team's on a certain rotation, but you'll pull them into a higher
3 cadence to support those teams.

4 Q. Give me one moment, sir. Sir, can you just describe
5 briefly how well you and your staff were in the planning and
6 execution operations in Afghanistan and Iraq, how that interaction
7 worked?

8 A. Yes. Depending on at the tactical level, clearly the four
9 star commander there is going to do his plans, but what we would do
10 is provide them overarching guidance and direction by developing a
11 broader plan on how -- and we would integrate their work with other
12 entities that maybe aren't in their -- well-guarded area of
13 hostilities. For instance, areas in Afghanistan have to be closely
14 coordinated with ongoing operations and work we are doing in
15 Pakistan. But that Pakistan element isn't in direct control of the
16 commanders of the forces. So we would cross the boundary there to
17 help them with integration. Or to get them approval authorities and
18 -- that they would need to execute particular operations. When we
19 are doing buildups and drawdowns we'd also spend a significant amount
20 of time ensuring they have the right forces at the right time and the
21 things they need, whether that be support in the fights that they are
22 having with counter-IED and support with ISR, new technologies, all
23 the way through to ensuring that we help them in coordination with

1 some of our allies and partners in load sharing in some of the
2 missions.

3 Q. Sir, aside from the theaters in Iraq and Afghanistan, what
4 was CENTCOM's primary focus operationally during the time you were
5 the J-3?

6 A. Well, I wouldn't say our primary focus, we had multiple
7 lines of operations we were doing. Some of the areas of focus that
8 we had, of course, is security cooperation with other countries. And
9 one of those that was in the forefront of our minds all the time was
10 counter-terrorism operations. So across many of the countries in our
11 AOR we teamed with different levels and different degrees with the
12 countries in that counter-terrorism fight. Some countries we worked
13 -- we would trained members of that country and other countries
14 worked with their forces. But in all cases we're working by, with,
15 and through these other countries. In some cases it was just
16 information sharing of intelligence information and operation TTPs.
17 So we're extensively building a network as counter-terrorism
18 operations across all those boundaries.

19 Q. Sir, I want to transition now to the release of information
20 from the CIDNE database.

21 A. Okay.

22 Q. I assume you became aware at some point in July 2010 of the
23 release of SIGACTS from Afghanistan?

1 A. We did. We were very much attuned to that release of that
2 information.

3 Q. And, sir, how did your staff, just very briefly, how does
4 your staff use SIGACTS in their products that are used by the J-3 or
5 otherwise?

6 A. It's probably good to explain what the CIDNE database is a
7 little bit as part of that.

8 Q. Sure.

9 A. The CIDNE database are files, it's just a name, really
10 think of it as a big hard drive. It's just our in -- where we store
11 all -- a lot of our information, operational intelligence
12 information, at CENTCOM. And a SIGACTS is sub-portion of that.
13 SIGACTS means significant activities. And a significant activity
14 could be something as small as a singular event, like a small arms
15 fire in a particular area or something as large as a major milestone
16 in an operation or an event that wasn't planned or an operation that
17 was either going as planned or not as planned. So basically just
18 consider it a wide ranging look at all the operations that would be
19 going on in CENTCOM. It's the basic core pieces of the way we
20 transmit back and forth between higher headquarters, subordinate
21 commanders in essence share all the way up through Washington, events
22 that are going on so that everyone can track the current situation.
23 Now we augment that with other information, televideo conference,

1 other communication networks to fill in the blanks. And typically
2 the SIGACT is the core piece of information and with that maybe will
3 also come very high definition maps and photographs and files that
4 are attached that further describe the event. And it could be, like
5 I said, a small arms fire, could be an IED event, could be a
6 milestone in a current operation, or it could be a crisis action
7 event, like a missing Soldier or something like that. But they're
8 all reported through that system. It's a -- if you were to look at
9 it, you're basically looking at the play-by-play of what's going on
10 in CENTCOM. We call it -- and each of those would be what we call a
11 tick tock, time on a clock in the event and they can be pages long of
12 information.

13 Q. Yes, sir. And when you learned that WikiLeaks had released
14 information from the CIDNE Afghanistan Database, were you at least
15 initially aware of what had been released?

16 A. We didn't have an initial sense of it. We knew the scope
17 was large, but we didn't have the sense of exactly what information.
18 So, as with any one of those things I talked about before, we stood
19 up a Crisis Action Team whose specific job was to evaluate if we had
20 current operations, positions, people vulnerable to exploitation by
21 the enemy because of the release. In other words, and your first
22 step is to go -- take a look, is there something that can be
23 immediately used by the enemy against our forces.

1 Q. And, sir, you said you stood up a Crisis Action Team; is
2 that correct?

3 A. Yes, at the CENTCOM level.

4 Q. And do you recall approximately how many individuals on
5 your staff worked on this Crisis Action Team?

6 A. Well, it was a combined J-2/J-3 team so it was a rather
7 large team. Typically in the room at any one time were probably
8 between ten and twenty people in there working on that team. And
9 they'll also reach out remotely to, some people don't have to leave
10 their desk to support the team. They are given an assignment and
11 they do their assignment from there and they are feeding that into
12 the team.

13 Q. And, sir was the -- was it a 24/7 operation?

14 A. It was.

15 Q. Do you recall how long the Crisis Action Team was in place?

16 A. Well, we dealt with the WikiLeaks thing for my entire
17 tenure in CENTCOM. But the Crisis Action portion, what we were
18 initially looking at was ongoing operations that could possibly be
19 compromised, any TTP that that we would want to immediately alter
20 because it was compromised. Locations and maybe the physical
21 security related to those locations. So for that portion of the
22 look, which didn't get into the people portion, in other words,

1 whether those be sources or other individuals, probably took several
2 weeks. I don't remember exactly.

3 Q. That's fine, sir. If the SIGACTS only went through
4 December of 2009, why were you concerned about potentially operations
5 in locations that might be -- might have been compromised?

6 A. The operations in CENTCOM aren't done in small bites. They
7 are generally part of larger plans. And SIGACTS, to put things in
8 context, will talk about a particular event, but it will also put in
9 the context of a larger operation. So in that SIGACT can be, even
10 though I think actually some of those SIGACTS went at least through
11 the end of 2009, and we are now in the July timeframe of 2010,
12 clearly went in -- were in the period of operations that we were
13 doing now. In addition, locations, physical locations that we were
14 using absolutely would have been the same. Some changes to them, but
15 in a general sense the physical security, the details that are
16 described in there, and locations we are using, would be pretty
17 static. They probably did not change in that timeframe. And most of
18 the TTPs described in there of how we got information would not have
19 changed also. So that evaluation was important to do. Even if he
20 couldn't change it, we needed to know where our vulnerabilities were.
21 You have to think of Afghanistan as having a lot of remote locations,
22 some are FOBs and well understood, and the enemy kind of knows
23 they're there. Other places we may use as bases or locations that

1 may not be so understood. And you can understand that we would not
2 want to -- that that look was to ensure that some of those locations
3 were not compromised. So we wouldn't, in a current or planned
4 operation ongoing, step into a potential danger zone because we're
5 visiting a place that the enemy now knows we are using.

6 ATC[CPT MORROW]: Yes, sir.

7 ADC[MAJ HURLEY]: Ma'am we would object ----

8 MJ: Yes?

9 ADC[MAJ HURLEY]: ---- 1001(b)(4).

10 MJ: Noted.

11 **Questions continued by the assistant trial counsel [CPT MORROW]:**

12 Q. And, sir, at any point did you or your staff become
13 involved in the process to notify individuals in Iraq and Afghanistan
14 that may have been made public or compromised in the SIGACTS?

15 A. Absolutely. We teamed now with the J-2 organizations,
16 which stood up a task force that went well outside the CENTCOM
17 Headquarters to identify any source and the source term that we used
18 for this piece was a name that could be identified as an individual
19 that had connection to the United States in terms of passing
20 information to. It -- so once we determined that there was a
21 significant number of those names, the task force stood up to define
22 them and categorize them and then also help us ----

1 Q. Are you speak --- I'm really sorry, sir. Are you speaking
2 of the IRTF at this point?

3 A. I am.

4 Q. Okay.

5 A. And the IRTF's function, I wasn't on it, but we coordinated
6 with that team. When I say I wasn't on it, my team contributed to
7 that team. I personally was not on the IRTF. They were in a
8 different organization.

9 Q. Yes, sir.

10 A. They are a different organizational structure. We teamed
11 with them.

12 Q. Yes, sir.

13 A. That's what I mean. In -- The IRTF helped us to identify
14 not only the names of these folks, but their last known location,
15 what risks they were assessing these people to be under. And then we
16 turned around and issued two FRAGOs, one to U.S. Forces in
17 Afghanistan and another one to U.S. Forces in Iraq, which we referred
18 to as a duty to inform, but it was really an order that told them so
19 that we can continue to have and maintain -- to maintain the current
20 sources we have and to continue to gain future sources that we had to
21 go inform the people that we could contact that their name was on
22 this list and that they were potentially in jeopardy and some of them
23 in danger of retaliation from the enemy. We also did it because we

1 believe we had a moral and ethical responsibility to make those
2 notifications.

3 Q. Sir, who issued these FRAGOs?

4 A. I did. They were released under by the Director of
5 Operations, which was me.

6 Q. And, sir, what was the direction with respect to the actual
7 tactical level execution of these operations from the CENTCOM
8 perspective?

9 A. It was pretty clear we had to do two things. It ordered
10 them to, based on the category of how we laid these out according to
11 the IRTF, we had to inform these people their name was on this and,
12 therefore, the enemy likely had access to knowing they were -- that
13 they had -- or a source to the United States and they would likely to
14 be in danger. And then they had to come back to us on when they made
15 the notification, how they made the notification, if they didn't make
16 the notification, why.

17 Q. You said they had to come back to you. How were -- can you
18 describe how those missions were tracked at the CENTCOM level?

19 A. We tracked them to the IRTF team. So the J-2 tracked them
20 for us and reported them to -- and they kept the database for us. So
21 they were the housekeeper of the information. We also, it wasn't
22 just people in Afghanistan. We expanded it to also include villages
23 because there were village names listed -- and I don't want to -- for

1 those that haven't been to Afghanistan, but the villages -- each area
2 of Afghanistan has a shadow Taliban governor associated with it. And
3 villages in and of themselves for cooperating with either the
4 coalition or U.S. Forces can be retaliated against by the Taliban.
5 And as a result, in some cases we had to notify villages. So not an
6 individual, but that the village either let us use some facility in
7 there or helped us in passing us information, however it was
8 described. So we were sensitive to the villages also.

9 Q. Sir, do these duties to notify missions impact operations
10 at CENTCOM Headquarters in Iraq and Afghanistan?

11 A. I'll take that in two parts. In the CENTCOM Headquarters
12 and beyond, absolutely. Because standing up a task force that you
13 just talked about is very consuming. Standing up a Crisis Action
14 Team that I talked about for the leading edge portion of this was
15 consuming. And then it was all additive. We are trying to manage
16 all those operations I talked to you before and then with the same
17 team we've layered on a new mission, not just for the Headquarters.
18 So now when it gets down to the commanders on the ground, eventually
19 Soldiers have to notify these people. Now we did that when we can
20 with our partners. But this was the U.S. order, not an ISAF order.
21 So we worked to notify these individuals with whatever missions that
22 the commanders on the scene determined that they had to do that. And
23 maybe I should give you a little time perspective on this. This was

1 not a small operation. It -- we issued the initial order to
2 Afghanistan, I believe in August of '10. We didn't get the final
3 reported until May of '11. So that's the length of time it took to
4 work through this list. And I can give you more specifics on the
5 numbers and it -- but they are classified in terms of the numbers
6 ----

7 Q. Yes, sir.

8 A. ---- size of it.

9 ADC[MAJ HURLEY]: Captain Morrow, excuse me. 1001(b)(4) to this
10 testimony.

11 MJ: Noted.

12 **Questions continued by the assistant trial counsel [CPT MORROW]:**

13 Q. Sir, I would like to transition to the release of purported
14 Department of State cables by WikiLeaks. Do you recall becoming
15 aware of that release of that information in the November-December
16 2010 timeframe?

17 A. I do.

18 Q. And without getting into any specifics, did you observe any
19 impact to CENTCOM operations as a result of this release?

20 A. There was absolutely impact as a result of the release of
21 those cables.

22 Q. Thank you, sir.

23 A. Purported cables.

1 ATC[CPT MORROW]: Ma'am, at this time we move to a closed
2 session, but defense may have questions.

3 ADC[MAJ HURLEY]: Ma'am, we do have cross-examination questions.

4 MJ: Go ahead.

5 **CROSS-EXAMINATION**

6 **Questions by the assistant defense counsel [MAJ HURLEY]:**

7 Q. Good morning, sir.

8 A. Morning.

9 Q. Sir, let's talk about SIGACTS for a second; all right?
10 And, sir, whenever I ask you questions, if your inclination is just
11 to answer yes or no, you still have to answer aloud for the court
12 reporter.

13 A. Okay.

14 Q. Thank you. Sir, inclusive in your testimony on direct was
15 that SIGACTS often don't provide all the information an individual
16 needs to assess what happened, correct?

17 A. It depends on -- that's not a yes or no answer. It
18 absolutely depends on if it's a simple incident or more complex
19 incident. In some cases it's pretty clear that the SIGACT covers all
20 the pieces of information you need to know. In others, because the
21 situation is evolving or more complex, there may be amplifying
22 information that we need to gather from whoever is making the report.

1 Q. So in other words, you have to fill in the blanks
2 sometimes?

3 A. We do sometimes.

4 Q. And SIGACTS tell you what happened at a specific location
5 in time?

6 A. Well they're also -- SIGACTS build on each other. So one
7 individual one may not tell you it all. It may have started and then
8 it may be five or six that tell the whole story.

9 Q. Whole picture, yes, sir. But either you need those other
10 SIGACTS or perhaps other information to understand completely what
11 had occurred or what was described in the SIGACT; is that right?

12 A. That's correct. In WikiLeaks though, the SIGACTS filed,
13 ones that were tied to each other were there. So you just had to go
14 backward or forward in the files to find them.

15 Q. Yes, sir. But the other amplifying information wasn't
16 there?

17 A. It -- there were pieces that weren't there, that's correct.

18 Q. Yes, sir. So my next question, sir, was SIGACTS, just --
19 and this is a generalized question, SIGACTS tell you what happened at
20 a specific location in time?

21 A. They do.

22 Q. And SIGACTS aren't forward looking, right, sir?

1 A. They often are. And the reason that they are is because
2 they may be telling you they'll be a significant activity report, but
3 it may be talking about a phase in an operation that will refer to a
4 future phase that's coming up. Which is why we had to go back and
5 look hard at these SIGACTS. So the answer to that question is, no, I
6 guess, because they are forward looking in some cases. In some case
7 they are specifically an event happened ----

8 Q. Right.

9 A. ---- and that's it. If it's part of a larger operation,
10 they typically have enough information that puts the operation in
11 context and talk about the next phase. Because that SIGACT may
12 jeopardize the next phase or it may set up the next phase.

13 Q. Yes, sir. SIGACTS themselves don't state doctrine,
14 correct? And let me give you an example. SIGACTS don't say, "If the
15 enemy does one X, then we are going to do Y?"

16 A. SIGACTS may refer to some doctrine in it, especially if we
17 deviated from it, it may mention deviated from doctrine or followed
18 doctrine. But doctrine can easily be deduced from them, because you
19 just have to track down from one through X and then if you see that
20 in two or three SIGACTS you have the TTP.

21 Q. Now, sir, my understanding is that a source -- the
22 expression source is a term of art. Is that accurate?

1 A. Well it -- depending on who is using it. It may have
2 different connotations to an intelligence person. For the terms of
3 WikiLeaks, we identified, for the IRTF identified and made a
4 definition for source that we would use that it was, and I don't
5 recall exactly the language they used, but it basically meant if
6 there was a name there that could be tied to cooperating with the
7 United States, that would be called a source for the WikiLeaks piece.

8 Q. True intelligence sources, they are not captured in
9 information by their name, correct?

10 A. In the SIGACTS you would not identify someone as a HUMINT
11 source, because that would require a higher level of classification.
12 However, there were sources that were in WikiLeaks. In other words,
13 there were names that were also, now source is the word, specific
14 individuals that the much higher intelligence classification
15 definition that were listed there. You just wouldn't see that
16 associated next to their name in the SIGACT.

17 Q. Because we would've -- if were managing them as a HUMINT
18 intelligence source in this situation, they would be listed by
19 number?

20 A. That's correct. Any of the names though it's not about
21 whether they were a direct source or not. It was that they were
22 associated cooperating with the United States that puts them in
23 danger.

1 Q. Now HUMINT reports are part of the CIDNE database, correct?

2 A. HUMINT -- there is HUMINT pieces and strings that are in
3 the CIDNE Database. It may not tell you who it came from.

4 Q. And that's separate and apart from the SIGACT part of the
5 CIDNE database?

6 A. No, it can be right in the SIGACTS. There's several events
7 that are ongoing that'll have a line of information. And it's clear
8 in the context that that line came from a HUMINT source. It just
9 won't tell you where.

10 Q. Right, sir. There is a HUMINT -- there is a HUMINT section
11 in the CIDNE database, correct?

12 A. There is.

13 Q. Now those individuals, let's just ----

14 A. It may not -- it may be the higher classification too. So
15 I can't say that is exactly in the CIDNE database. It may be at
16 higher classification than that.

17 Q. Yes, sir.

18 A. But separate from SIGACT was what your question was.

19 Q. Sur -- yes. And SIGACTS captured the names of these
20 individuals or individual's names were in the SIGACTS, right?

21 A. Absolutely.

1 Q. And that can be -- their name could be listed there just as
2 a result of single interaction with an individual that was described
3 in the SIGACT?

4 A. That's correct. And that may be all it takes to have an
5 association with cooperation with the U.S. is where the danger would
6 come in.

7 Q. And these individuals, these contacts, they can be people
8 friendly, they can be people disposed to like the coalition forces
9 and would want to participate in their activities?

10 A. Well the whole purpose of my FRAGO that I issued was to be
11 able to have trust built up that will have more people want to
12 continue cooperate with us and build -- and work with us in the
13 coalition.

14 Q. So I guess ultimately my question is, these individuals
15 that are listed in the SIGACTS, they can be friendly, essentially the
16 coalition forces?

17 A. Yes, absolutely.

18 Q. And they can also be people that are potentially unfriendly
19 to coalition forces, just individuals that were taken note of in the
20 course of interaction?

21 A. Some would be unknowns, that's correct.

22 Q. And there's no way of discerning that, as you just looked
23 at the data itself, correct?

1 A. It depends on the specific SIGACT. You would have to read
2 it. Sometimes it attributes information we got from some of the
3 people and has to be in the reason the next step was taken.

4 Q. These names in the SIGACTS, in the purported SIGACTS
5 ----

6 A. That's why we did that classification in IRTF to help get
7 to that point. Because we wouldn't go out there and notify one of
8 the bad guys that his name is on the list. Does that make sense?

9 Q. It certainly does, sir.

10 A. So that's why it reduced some of the names that were on the
11 list.

12 Q. So those names, sir, in these purported SIGACTS, they were
13 in English?

14 A. No. Well, they were written in English on the SIGACTS, but
15 they weren't English names, if that's what you mean.

16 Q. Yes, sir. I guess what I'm saying is, they were typed up
17 using the alphabet that the ----

18 A. That we use; that's correct.

19 Q. ---- the English alphabet. And spelled by the individual
20 actually putting in this information into the CIDNE database?

21 A. That there's -- again IRTF did their homework by going back
22 and looking at each of these to identify is this a person that we can
23 put our finger on and which one is it.

1 Q. Right, sir.

2 A. And by putting the other pieces of clues together that were
3 in the SIGACT and other known intelligence information to identify so
4 we could get it down to a specific person.

5 Q. Who put that information, that -- the name of this person
6 into the CIDNE database?

7 A. Whoever was generating that report.

8 Q. And that person ostensibly speaks English and uses the
9 English language?

10 A. In some cases. In other cases they could be Pashtu
11 speakers or whoever was filling -- they could be being done right
12 there with the interpreters with them as they are filling it out. It
13 depends on at what level the report's being filled out.

14 Q. But the report is ultimately intended for an English
15 speaking aud ----

16 A. An English speaking audience; that's correct. But if you
17 can imagine, in Iraq and Afghanistan identifying names and people is
18 really important. So when they do that, they don't take that duty
19 lightly. It's much like -- so if you are going to put a specific
20 name in there, you are generally going to do the homework to make
21 sure it's going to be traceable.

22 Q. Well, there a lot of different ways to -- there a lot of
23 different English spellings for Mohammed, are there not, sir?

1 A. There are, but not in that location in that particular part
2 of Afghanistan, etcetera. There will be enough other supporting
3 information to actually help us identify which person it is and then
4 which tribal element that he may be attached to. So you can start to
5 get down to where ----

6 Q. Well ----

7 A. ---- we have been at war in Afghanistan for 10 years, so we
8 have this part ----

9 Q. So you would agree that ----

10 A. ---- pretty much understood.

11 Q. ---- there is sometimes difficulties in translating these
12 names back and forth?

13 A. For us to read, but not for the intel community to help us
14 figure out who they are.

15 Q. So it's your testimony, ultimately, that those names are
16 likely to be accurate and understandable as they are translated back
17 and forth to these languages?

18 A. The preponderance of them we were able to identify and
19 associate them with -- so, yes, in answer to that question, I believe
20 that -- I'm certain there are some errors in that. But when we did
21 this analysis, and the task force can give you more specifics, but we
22 categorized them by different levels, A-B-C, to sift out any errors
23 or problems there would be so we would not be notifying someone that

1 didn't exist or trying to notify someone that didn't exist or trying
2 to notify somebody that wasn't on our team.

3 Q. Yes, sir. Sir, let's talk about the duty to warn that you
4 discussed with Captain Morrow during your direct examination; all
5 right?

6 A. I called it -- I think it was -- we called it a duty to
7 inform. But that was an abbreviated title, the FRAGO had a different
8 title. I can't recall exactly what it was.

9 Q. Sir, I'll just call it a duty to inform then so that we ---
10 -

11 A. Okay.

12 Q. ---- know that we are on the same sheet. Those are orders
13 issued by you at the CENTCOM Headquarters?

14 A. They were.

15 Q. One for Afghanistan and one for Iraq?

16 A. That's correct.

17 Q. And they -- as you testified -- sir, just one second let me
18 get my notes.

19 **[There was a pause while the defense counsel retrieved his notes from**
20 **the counsel table.]**

21 Sir, just to summarize your testimony with Captain Morrow,
22 you indicated there were two things that the subordinate

1 organizations had to do. The first was to inform the people where
2 they could; is that right, sir?

3 A. Yes.

4 Q. And the second was to inform -- the reporting task that you
5 gave back to these organizations was, inform when the contact was
6 made, how the contact was made, and if there was no contact, why
7 there was no contact?

8 A. And I may not have those exactly right. But that's the
9 general gist of what the FRAGO said.

10 Q. And, sir, there was other language in the FRAGO,
11 specifically there you -- there was instruction to -- from you to the
12 subordinate organizations to mitigate the risk?

13 A. Well, in the FRAGO the way it said was, "Evaluate the
14 risk." I don't know that mitigate was the point that we made. It's
15 up to the commander on the scene to determine the level of risk he's
16 willing to accept in carrying out the operation. So in all cases
17 those commanders worked to mitigate risk, which means to lower to the
18 lowest level possible for any operations.

19 Q. Absolutely.

20 A. But in some cases there may be someone that's in such a
21 location or some other reason -- compelling reason that you can't get
22 -- the risk of the notification exceeds that of which the commander
23 would be willing to accept for that potential value gained. That's

1 up to that local commander and then he would report to us if he
2 couldn't do and why.

3 Q. Right. That was part of his reporting requirement was to
4 explain that back?

5 A. Yes.

6 Q. Through the chain.

7 A. That's correct.

8 Q. So let's talk about just, I think, evaluating risk is
9 perhaps intuitive, but let's walk through those steps, sir, if we
10 might. So in evaluating the risk, first you assess the situation,
11 correct?

12 A. You know, risk has three, you know, three levels the way
13 that we looked at it in CENTCOM. One is, there's evaluation of risk.
14 It's some level you apply, high level, high, medium, low, however you
15 want to parse that out. And then risk to a specific thing. Is it to
16 the force or mission, or both, in some cases it's both. And then the
17 risk has a duration. How long is the risk for? For a mission it may
18 be the length of the mission or may be for some time afterwards, if
19 it's some other event. So risk is very complex piece and as you can
20 imagine, there's an inherent level of risk just being in Afghanistan.
21 So you are starting at that level.

22 Q. Yes, sir. And you left it to the individual commanders to
23 make that decision considering the risk as they analyzed it?

1 A. As we always do.

2 Q. As you indicated implicitly I think in one of the responses
3 to my question, sir, the responses that you received from the
4 subordinate commands fell on a wide range; is that right?

5 A. What do you mean by that?

6 Q. Well, let me give you the categories, as I understood them
7 -- as I understand them. First, there were instances where the
8 person was warned?

9 A. Right.

10 Q. And not only the person, but if it was a larger group,
11 whether it was family or even a village that end of -- that group
12 however reckoned was warned?

13 A. That's correct.

14 Q. And then in other instances the person was not warned; is
15 that right?

16 A. That's correct.

17 Q. And then the third set of responses that you received back
18 were, was the response to indicate that the subordinate commander
19 didn't look and he listed out his reasons why the search was not
20 conducted?

21 A. Well, I don't know that he didn't look. You know,
22 Afghanistan is not like here in the United States. There is not a
23 street address that these -- that we can go to. So information about

1 the individual -- it's not simple to find an individual for all the
2 reasons that you said, so that's what increases risk in these
3 operations is it's not simple and you're not just walking up just to
4 a door on the street ----

5 Q. Right.

6 A. ---- and saying, "Hey, Mr. Smith, want to know your name is
7 on the list." We maybe didn't have an operation going to that
8 village. Maybe our presence going to that village can be a problem,
9 we may have to mount an operation to go to that village to make -- to
10 know so there may be normal patrols through there. Because you have
11 a full range of what could be going on.

12 Q. So in just ----

13 A. Or the Afghans may be able to notify the person. You know,
14 we would explore all the means that we had.

15 Q. All the options?

16 A. That's correct.

17 Q. Sir, one thing that you would -- that subordinate
18 commanders would do to mitigate the risk would be to synchronize this
19 notification with whatever ongoing operations they had?

20 A. If possible, absolutely. That was the routine patrol piece
21 I was getting at.

22 Q. And, sir, you were in a position to receive these responses
23 from the field?

1 A. These responses came in through the J-2 team who tracked
2 them in a similar database so that we could do accounting. Because
3 now what we're into is to accounting -- we are certainly not going to
4 question the commander for what he did or didn't do.

5 Q. Yes, sir.

6 A. We were merely making sure they followed the intent of the
7 instruction until we got to closure of the guidance.

8 Q. Sir, did you ever see a report where there was a coalition
9 forces casualty that was incurred as a result of executing this duty
10 to inform mission?

11 A. No. I wouldn't have expected to see one anyway because of
12 the -- what I just talked about, that in almost all cases, not in
13 almost all cases, but to make that direct connection would be very
14 hard to make because of the complexities of Afghanistan.

15 ADC[MAJ HURLEY]: Thanks. Ma'am, nothing further here in the
16 open session.

17 MJ: Redirect?

18 ATC[CPT MORROW]: No, Your Honor.

19 MJ: All right. Members of the gallery and the public, we are
20 going to proceed into a closed session. Before we do that let's talk
21 about we have another witness coming today. I assume we are going to
22 have another open session today.

23 TC[MAJ FEIN]: Yes, Your Honor.

1 ADC[MAJ HURLEY]: Yes, ma'am.

2 MJ: And there are some additional administrative things that
3 need to be done over the lunch hour. So what time do you think is
4 reasonable to inform the public that we will be coming back on the
5 record. And please, again, think, I don't want to, to the extent we
6 can avoid it, extend it by 15 minute increments. So go long.

7 TC[MAJ FEIN]: May we have a moment, ma'am?

8 MJ: Yes.

9 **[There was a pause while the trial counsel conferred at the counsel**
10 **table.]**

11 ATC[CPT MORROW]: Your Honor, we recommend 1500.

12 MJ: Members of the public, we are going into closed session and
13 we will be reconvening 1500 or 3:00 for the next open session that we
14 will have today.

15 TC[MAJ FEIN]: And, ma'am, this closure is pursuant to your
16 previous order, Appellate Exhibit 550.

17 MJ: Thank you. Is there anything else we need to address
18 before I recess the court?

19 TC[MAJ FEIN]: No, Your Honor.

20 ADC[MAJ HURLEY]: Not from the defense, ma'am.

21 MJ: All right. Rear Admiral Donegan, please do not discuss
22 your testimony with anyone during the course of the recess.

23 **[The court-martial recessed at 1106, 9 August 2013.]**

Pages 12415 through 12471 of this transcript are classified “SECRET”. This session (9 August 2013, Session 1) is sealed for Reasons 2 and 3, Military Judge’s Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

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1 [The court-martial was called to order at 1129, 9 August 2013.]

2 MJ: Court is called to order. Major Fein, please account for
3 the parties.

4 TC [MAJ FEIN]: Yes, ma'am. All parties, when the court last
5 recessed, are again present. This is a closed session, classified at
6 the Secret level. The court security officer completed a closed
7 hearing checklist to be filed in the post-trial allied papers.

8 Additionally, in the courtroom, Your Honor, are members of
9 the prosecution team, members of the defense team, and security along
10 with the bailiff.

11 MJ: Proceed.

12 TC [MAJ FEIN]: And, I'm sorry, ma'am, the witness is on the
13 witness stand.

14 [Rear Admiral Donegan was reminded of his previous oath and
15 examination continued.]

16 Q. Sir, in open session you described an impact you observed
17 to CENTCOM operations as a result of the disclosure of State
18 Department cables. What type of operations were impacted in the
19 CENTCOM AOR?

20 A. Where I could see a direct and measurable impact was
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22 Q. sir?

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4 Q. Sir, let's start with

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13 Q.

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17 A.

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21 Q. And what changed in the relationship after December 2010,
22 that was observable to you?

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1 A. We had a--basically, up until WikiLeaks,

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4 Q. Yes, sir, please.

5 A. ----in
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17 MJ: The who

18 WIT:
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20 MJ: Can you spell that for the court reporter, please?

21 WIT: I'll do my best because there's different spellings,
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1 MJ: Thank you.

2 WIT: And don't quote me on the accuracy of that for much of the
3 reasons we talked about earlier with names, but that's how I spell
4 it.

5 MJ: Thank you, sir.

6 [Examination of the witness continued.]

7 A. So---also,

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21 MJ: Yes?

22 ADC[MAJ HURLEY]: Sir, objection, ma'am, hearsay.

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1 MJ: Yes?

2 ATC[CPT MORROW]: I didn't--what was the statement?

3 MJ: The objection is hearsay.

4 ATC[CPT MORROW]: I didn't hear what was the statement?

5 ADC[MAJ HURLEY]: That he--unless I didn't understand exactly--

6

7

8 We would submit to the Court that that's a

9 hearsay statement?

10 MJ: Captain Morrow?

11 ATC[CPT MORROW]: I didn't hear that.

12

13

14 MJ: I want you to address the hearsay objection.

15 ATC[CPT MORROW]: Weekend--I don't know--I'm not sure I

16 understand what the statement is. The----

17 ADC[MAJ HURLEY]: Ma'am, would you like----

18 MJ: No, no, no, I believe the basis of the objection is that

19 the witness said that

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1 WIT:

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3
4 MJ: And they reported to you

5 WIT:

6 MJ: All right. Address the hearsay exception--or objection.

7 ATC[CPT MORROW]: Your Honor, I'll attack the problem from a
8 different angle, if that's okay?

9 MJ: All right. Sustained.

10 [Examination of the witness continued.]

11 Q. Sir, what about the

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13 A.

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18 Q. And, sir, what happened after the public disclosure of the
19 cables--to the relationship--

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1 A.

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4 ADC[MAJ HURLEY]: Pardon me, sir. Hearsay, again. I've gone
5 over the basis for Admiral Donegan's opinion with respect to this
6 information.

7 MJ: I'm going to overrule that go-ahead.

8 [Examination of the witness continued.]

9 A. Well----

10 Q. Sir----

11 A.

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17 Q. And this was immediately after December 2010?

18 A. Yes.

19 Q. Sir, why

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21 A. I

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11 Q. And, sir, how long did this--

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13 A. To be honest,

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17 Q. And do you recall when that was?

18 A. I'd have to go back and look to see when that happened--on

19 the calendar but-----

20 Q. It was before--

21 A.

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Q. And, sir,

A. Yes--I don't want to--

MJ: Yes?

ADC[MAJ HURLEY]: Pardon me, Admiral. Ma'am, we'd object to this as cumulative along with----

MJ: Cumulative to what?

ADC[MAJ HURLEY]: ----General Nagata. General Nagata's testimony, ma'am.

MJ: Overruled. Proceed.
[Examination of the witness continued.]

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Q. Yes, sir.

A. And that went both way.

Q. And that impacted

A.

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Q. Yes, Sir

A. And so this impacted our

Q. Sir, can--let's move on to sort of a different topic. Can you describe what CENTCOM was doing with respect to information operations while you were the J-3?

A. Yes.

Q. And, sir, what--how were information operations at CENTCOM impacted by the disclosures--the WikiLeaks disclosures?

A.

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ADC[MAJ HURLEY]: Objection, ma'am, hearsay.

MJ: What is hearsay about that?

ADC[MAJ HURLEY]: He--I would suppose that Admiral Donegan read that after he was given the information and read it as an out of court statement----

MJ: Are you offering it for the truth of the matter asserted?

ATC[CPT MORROW]: No, sir--only----

MJ: Overruled.

ATC[CPT MORROW]: No, ma'am. I'm sorry.

[Examination of the witness continued.]

Q. Go ahead, sir.

A.

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1 Q. Sir, I won't finish up by going back to a SIGACT--

2

3

4

5

6 Sir, do you recognize that Significant Activity Report?

7 A. I do.

8 Q. And what is it?

9 A.

10

11 Q. And what

12 A. It was--at the time--

13 Q. And, sir, how does the----

14 A.

15

16

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19 Q. Yes, sir. Let's--we'll just stick to the SIGACT, itself.

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1 A. Yeah, I think I, earlier,

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7 Q. What is one out to you, sir?

8 A.

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21 ATC[CPT MORROW]: Thank you, sir. Retrieving Prosecution
22 Exhibit--or Defense Exhibit X. No further questions.

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1 MJ: Cross-examination?

2 ADC[MAJ HURLEY]: Sir--ma'am, may I approach the witness?

3 ~~CROSS-EXAMINATION~~

4 Questions by the assistant defense counsel [MAJ HURLEY]:

5 Q. Sir, I'm handing you back Defense X for--that's been
6 admitted into evidence. If you would just open that up real quick.
7 As you--take a moment and scan down that page and when you've read
8 the first page, would you just let me know?
9 [The witness did as directed.]

10 Q. Just the first page, sir.

11 A. Okay.

12 Q. Sir, in that, did you see any
13

14 A. I
15
16

17 Q. Yes, sir. So, did you----

18 A. So, yes.

19 Q. Okay, sir.
20

21 A.
22

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7 Q. What are those--what are the

8 A. In here, we actually mentioned, also,

9

10 Q.

11 A. Yeah. In--I have to find it, here, again.

12

13

14

15 Q. So, sir,

16 A. Sure.

17 Q. I didn't mean to cut you off--

18

19

20 A. No, they absolutely know

21

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Q. What, in that whole process, would have been news to the threat?

A. It's not--as I said,

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Q. Well, sir, if your life is--

A.

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1 ADC[MAJ HURLEY]: And, ma'am, if I may? The witness covered his
2 mouth with his right hand.

3 MJ: Thank you.

4 A.

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16 Q. Sir, what of

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18 A.

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1 Q. And, sir,

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3 A.

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12 Q. Well,

13

14 A.

15

16

17 Q. And, sir, that's a response--

18

19

20 A.

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1

2

3 Q. It's got that tick-tock to it?

4 A.

5

6

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10 Q. Sir, you're aware that

11

12 A. This is not--

13

14

15

16

17 Q. And how we do it is included in that?

18 A. The how

19

20

21 Q. But the circumstances will be different next time, correct,

22 sir?

~~SECRET~~

~~SECRET~~

1 A.

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7 Q. Sir, can I--yes, sir. Thank you. If you would open back
8 DE X up again?

9 A. Sure.

10 [The witness did as directed.]

11 Q. What's the next

12

13 A.

14

15 Q. Well, sir, if it pushes the bounds of the Secret, we're in
16 a Secret forum now, so----

17 A. What I'm trying to say is this was labeled,

18

19

20

21

22 Q. Yes, sir.

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~~SECRET~~

1 A.

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4 Q.

5

6 A.

7 Q.

8 A.

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14 ADC[MAJ HURLEY]: May I approach, ma'am?

15 MJ: Yes.

16 ADC[MAJ HURLEY]: I'm going to retrieve Defense Exhibit X from

17 the witness.

18 [Examination of the witness continued.]

19 Q.

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21 A.

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Q. It's a complex relationship, sir?

A.

Q. Prior to the WikiLeaks disclosures,

A. That's correct.

Q.

m

A.

Q.

A.

Q.

A.

Q.

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1 A.

2 Q. But the two that you mentioned with Captain Morrow on
3 direct, sir, one was----

4 A.

5 Q.

6

7 A. Yes.

8 Q.

9

10 A. There are.

11 Q.

12 A.

13

14 Q.

15

16

17 A. Well, I think it was pretty firm for a period of time, to
18 be honest, but----

19 Q.

20 A.

21

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~~SECRET~~

1 Q.

2

3

4 A.

5

6 Q.

7

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9 A.

10

11 Q.

12 A.

13

14

15 Q.

16

17 A.

18

19

20 Q.

21 A.

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1 Q. ----

2 A. ----

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6 Q.

7 A.

8 Q.

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11 A.

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21 Q. Well, just let me--I guess, sir, I'll repeat my question.

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A.

Q. And that----

A.

Q. And that occurred before the WikiLeaks disclosures?

A.

Q.

A.

Q. Now, you indicated, sir,

A.

Q.

A.

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1 Q.

2

3 A.

4

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7 Q. Were these other efforts to

8

9 A. No.

10 Q. Not even in part?

11 A.

12

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1 Q. Yes, sir.

2 A.

3 Q.

4

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6 A. Uh-huh.

7 Q.

8

9 A.

10 Q.

11

12 A.

13

14 Q.

15

16

17

18 A.

19

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3 Q.

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5 A.

6 Q.

7 A.

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11 Q.

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14 A.

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19 Q.

20 A. Yes.

21 Q.

22

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1 A.

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7 Q.

8 A. I do.

9 Q.

10 A. He was.

11 Q.

12 A. Yes.

13 Q.

14 A. He did.

15 Q.

16 A. He did.

17 Q.

18

19

20

21 A.

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1 Q.

2

3 A. That's one example.

4 Q.

5

6 A.

7

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12

13 He----

14 Q. And, sir, speaking of General Nagata, if I may, did he pass
15 along to you how

16 A.

17

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~~SECRET~~

1 Q. Did----

2 A. I don't remember what it was for that instance.

3 Q.

4

5

6

7 A. Well, to us,

8 , time will tell.

9 Q. Yes, sir.

10 A.

11

12 Q. So, sir----

13 A. We make our predictions, but they're just predictions.

14 Q. Do you recall whether or not he relayed that to you?

15 A. I don't recall.

16

17

18

19

20

21 Q. Sir, do you know who

22 A. Yes.

~~SECRET~~

~~SECRET~~

1 Q. And correct?

2 A. I know what I read.

3 Q. Part of your reading, then--I'll just keep going to verify.

4

5

6 A.

7

8 Q. And there was fallout from that accusation.

9 A. Certainly.

10 Q.

11 A. It--to what extent--hard to connect.

12

13

14

15 Q. It turned out the way the United States government would

16 have wanted it to turn out?

17 A. That's correct.

18 Q.

19

20 A.

~~SECRET~~

~~SECRET~~

1 Q.

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3

4 A. You know, that's hard to tell because we just--

5

6

7

8

9 Q. Sir, at the Secret/NOFORN level,

10

11 A.

12

13 Q. Yes, sir. Thank you. That same concept may have played--

14 may apply to this next line of questioning, but before I go there,

15 sir,

16

17 A. I don't really remember the exact date, but I'll trust that

18 that's correct.

19 Q. Sir, the problems

20

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1 A.

2

3 Q. October 2010? Does that sound about right?

4 A. Yeah, I think that's when. I'm not sure when the cables
5 came out. I thought the cables came out later than that.

6 MJ: Yes?

7 ATC[CPT MORROW]: The defense is mischaracterizing the evidence,
8 Your Honor. We have improper----

9 ADC[MAJ HURLEY]: What's improper characterization?

10 MJ: Well, I think----

11 ATC[CPT MORROW]: November to December of 2010; that's a fact in
12 evidence already.

13 ADC[MAJ HURLEY]: Well, thanks, Captain Morrow and I'll be glad
14 to restate my question with this new information.

15 MJ: Well, let--why don't you ask your questions. Government,
16 if you have--if you want to refer to something to refresh the
17 witness's recollection when you get back up, go ahead and do it.
18 [Examination of the witness continued.]

19 Q. All right sir, so----

20 A. What I can't tell you is the timing of those events and how
21 they relate to each other exactly.

22 Q. Right.

~~SECRET~~

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1 A. It's too long ago and I don't have the sequence in my head.

2 I would be speculating on what the sequence was.

3 Q. Yes, sir, we'll just end it right there.

4 Q. Sir, let's talk about the

5 3

6 A. I was.

7 Q.

8 A. That's correct.

9 Q. And it occurred

10 A. Okay.

11 Q. It did? And----

12 MJ: Did you know when it occurred?

13 A.

14

15 [Examination of the witness continued.]

16 Q. All right, sir. Well, I'll just skip past that question,

17 then.

18 A. It did.

19 Q.

20

21 A.

~~SECRET~~

~~SECRET~~

1 Q.

2

3

4 A.

5

6 Q. And, sir, going back----

7 A.

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11 Q. Sir, were you ever told--and I'm going to ask the same

12 question about

13

14

15 A.

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~~SECRET~~

1 Q.

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4 A.

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8 Q.

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10 A.

11

12

13 Q.

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19

20 A. Okay.

21 Q. So that's the time period I'm talking about and the

22 location I'm talking about. So, prior to WikiLeaks, did you ever

~~SECRET~~

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1 read or understand reports that the Pakistani populace was angry
2 about in Pakistan.

3 A. Yes, I read the same things you did in the papers.

4 Q.

5

6

7 A.

8

9

10

11

12 Q. Yes, sir.

13

14 A. Not that I can recall.

15 Q. Sir,

16

17 A.

18

19

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1 Q. And, sir, that's exactly where I'm going. So--and, again,
2 I'm necking you down into a time constraint

3
4 Q. The border is amorphous and it's also not super well-
5 defined.

6 Q. Sure.

7 A.

8

9

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13 -

14 Q. Sure.

15 A. ----just in the area I can see.

16 Q. Sir, let me just go ahead and get to a question on this.

17 Were you

18

19

20 A.

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3 Q. And that----
4 A.
5 Q.
6
7 A. And after.
8 Q.
9
10
11 A. Yes.
12 Q.
13
14 A. I do.
15 Q. Sir, in that meeting,
16
17 A. Yes.
18 Q. And you also--and that's true, to your memory, today?
19 A. That's true.
20 Q.
21
22

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~~SECRET~~

1 A.

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7 Q. Yes, sir.

8 A.

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12 Q. And that's General McKenzie, sir?

13 A.

14

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Q. But, sir,

A.

Q.

A.

Q. It was accomplished in other, slower ways, sir, is that right?

A. Yes. We don't just--

Q. And you indicated, several times, sir, in your testimony

~~SECRET~~

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1 A. Very complex.

2 Q. ----relationship?

3 A. Yes.

4 Q.

5

6

7 A.

8

9

10 Q.

11 A. Yes.

12 Q. Sir, I'm just going to take a second and go over my notes.

13 A. Sure.

14 Q.

15

16 A. Response to what?

17 Q.

18

19

20 A.

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3 Q. Yes----

4 A.

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11 Q. Yes, sir.

12 A.

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14 Q. Yes, sir.

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18 A.

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Q. Sir, would it surprise you--

A. No.

Q. He's--all right, sir.

A. Oh, okay, absolutely.

Q. And *Inspire* magazine is a publication of Al-Qaeda in the
Arabian Peninsula?

A. I know all about *Inspire* magazine.

Q.

A.

Q.

A.

Q. But----

A. So----

~~SECRET~~

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1 Q. So it would surprise you that it was just mentioned in one
2 edition?

3 A.

4

5 Q.

6

7

8 A.

9

10

11

12

13

14 Q. Yes, sir. Sir, I'm going to use--instead of a sport's
15 expression, I'm going to use a gambling expression.

16 A. Okay.

17 Q. I won't use it.

18

19

20 Q.

21

22 Q. Of any specific----

~~SECRET~~

~~SECRET~~

1 A.

2

3 Q.

4

5 A. In a general sense, no, not that I know of.

6 Q.

7

8

9 A.

10 Q.

11

12 A.

13 Q. Sir, you just take a second, I'm going to go over my notes
14 again. Sir, you indicated that you've been employed by the United
15 States government for 33 years?

16 A. I have.

17 Q. All of those 33 years active duty?

18 A. They have been.

19 Q. And you've been working with classified documents the
20 entire time?

21 A. I have.

~~SECRET~~

~~SECRET~~

1 Q. Have you ever--and, even during that time period, you've
2 been an Original Classification Authority, is that right, sir?

3 A. As the CENTCOM J-3, one of my positional responsibilities
4 is classification authority for all the information related to
5 operations.

6 Q. Sir, in that time, have you ever questioned the executive
7 orders with respect to the classification of information? Have you
8 ever thought to yourself, "You know what? We got this wrong"?

9 A.
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18 Q. Sir, have you ever questioned the guidance?

19 A.
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ADC[MAJ HURLEY]: Yes, sir. Nothing further.

MJ: Redirect?

ATC[CPT MORROW]: No, Your Honor.

MJ: I just have one question.

EXAMINATION BY THE COURT-MARTIAL

Questions by the military judge:

Q. To the extent you can remember, do you remember the date that Mr. al-Awlaki perished?

A. You know, I should, but for some reason it escapes me.

Q. As close as you can get.

A. No.

Q. When did--well, let me put it--when did you leave the J-3 position?

~~SECRET~~

~~SECRET~~

1 A. I left in June of 2012.

2 Q. And you got there in 2010, is that correct?

3 A. That's correct, in May of 2010.

4 Q. Did it pre-date or post-date the WikiLeaks disclosures that
5 you testified about?

6 A.

7
8
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12
13 MJ: All right. That's fine. Anything--any follow-up based on
14 that?

15 ATC[CPT MORROW]: No, Your Honor.

16 ADC[MAJ HURLEY]: Ma'am, I do.

17 MJ: Okay.

18 **RECROSS EXAMINATION**

19 **Questions by the assistant defense counsel [MAJ HURLEY]:** Sir, if I
20 suggested a date to your memory, might that help?

21 A. It may, but I don't want to commit to something that I
22 can't say is absolutely true.

~~SECRET~~

~~SECRET~~

1 Q. And if this isn't--if you can't commit to it, then just let
2 me know, all right, sir? 30 September 2011.

3 A. Yeah, that sounds right to me, yes.

4 Q. Thank you, sir. That's the date that Anwar al-Awlaki
5 perished?

6 A. Yes.

7 ADC[MAJ HURLEY]: Thanks.

8 MJ: All right. No further questions from the government based
9 on what I just said?

10 ATC[CPT MORROW]: No, Your Honor.

11 MJ: Temporary or--yes?

12 TC[MAJ FEIN]: Ma'am, I'm sorry. Prior to Admiral Donegan's
13 release, may we have a moment?

14 MJ: Yes.

15 TC[MAJ FEIN]: It's not about the substantive question. Thank
16 you.

17 TC[MAJ FEIN]: Sorry, ma'am. Nothing further.

18 MJ: All right. Temporary or permanent excusal.

19 TC[MAJ FEIN]: Temporary, ma'am.

20 [The witness was duly warned, temporarily excused, and withdrew from
21 the courtroom.]

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1 MJ: Please be seated. Okay. Well, Major Fein, are you--we
2 said 1500. Is that still a good time for everyone?

3 TC[MAJ FEIN]: May we have a moment to discuss, ma'am?

4 MJ: Yeah, and the other thing I wanted to ask you--if it's
5 going to be pressuring the defense for time interviewing this
6 witness, maybe we can do the administrative piece with the exhibits
7 following the witness's testimony. I'd rather do that than not start
8 at 1500.

9 TC[MAJ FEIN]: Yes, ma'am.

10 MJ: What do you think works best?

11 ATC[CPT MORROW]: Ma'am, I believe Major Hurley wants to be--
12 we'd like to move the administrative piece after the witness so that
13 he can be a part of it.

14 ADC[MAJ HURLEY]: Yes, ma'am, that's absolutely correct. I
15 didn't mean to outsource that response to Captain Morrow.

16 MJ: That's fine. Okay.

17 ADC[MAJ HURLEY]: But, yes, ma'am, and Captain Morrow just
18 informed me that the--Major General McKenzie is here, so I'll begin
19 my interview at 1300 and I anticipate we'll be ready to go by 1500.

20 MJ: All right. So we'll leave the schedule as it is and then
21 just do the administrative piece afterwards. Anything else we need
22 to address?

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- 1 TC[MAJ FEIN]: No, ma'am.
- 2 MJ: Court is in recess until 1500.
- 3 [The court-martial recessed at 1243, 9 August 2013.]

~~SECRET~~

1 [The court-martial was called to order at 1459, 9 August 2013.]

2 MJ: Court is called to order. I believe all parties present
3 when the court last recess are again present in court. Is that true,
4 Major Fein?

5 TC[MAJ FEIN]: Yes, ma'am, it is. Also, ma'am, this is an
6 unclassified session and the court security officer completed the
7 open hearing checklist which will be filed in the Post-Trial Allied
8 Papers.

9 MJ: All right. Thank you. Before we begin, I do want to put
10 on the record during yesterday's testimony counsel and I broke for an
11 Artic -- or an R.C.M. 802 session and I neglected to put that on the
12 record. I just want to say the -- yesterday the court security
13 officer noticed a spectator that appeared to possibly have a
14 recording device. So the parties and I met to discuss that issue,
15 security addressed it. The device was not a recording device and
16 that was the extent of the R.C.M. 802 conference. Does either side
17 desire anything further to add?

18 TC[MAJ FEIN]: No, ma'am.

19 ADC[CPT TOOMAN]: No, ma'am.

20 MJ: Over the recess I received a defense request, or a defense
21 motion for judicial notice of publicly available IED information.
22 Has that been marked as an Appellate Exhibit?

1 ADC[CPT TOOMAN]: Yes, it has, Your Honor, and I believe it's
2 Appellate Exhibit 651.

3 MJ: Has the government had a chance to look over the motion?
4 TC[MAJ FEIN]: Not yet, Your Honor.

5 MJ: Okay. So you're going to come back to me then when to let
6 me know if you have an objection or not?

7 TC[MAJ FEIN]: Can we do it over an e-mail tomorrow, ma'am?
8 MJ: Yes. Why don't we do it that way. We'll address it.
9 We've already got another issue to address Monday morning and we'll
10 address this one as well.

11 TC[MAJ FEIN]: Yes, ma'am.

12 MJ: What was Appellate Exhibit 650?
13 TC[MAJ FEIN]: Ma'am, the court's ruling.

14 MJ: Okay. Ruling on Mr. McCall ----
15 TC[MAJ FEIN]: Yes, ma'am.

16 MJ: ---- and Mr. Pearson? Which also, for the record, I did
17 correct the typos in the numbers over the recess and the court
18 reporter has a corrected copy. Is there anything else we need to
19 address before the next witness?

20 TC[MAJ FEIN]: No, ma'am.

21 ADC[CPT TOOMAN]: No, ma'am.

22 MJ: Please call the witness.

1 ATC[CPT MORROW]: The United States calls Major General Kenneth
2 McKenzie.
3 **MAJOR GENERAL KENNETH F. MCKENZIE, U.S. Marine Corps, was called as a**
4 **witness for the prosecution, was sworn, and testified as follows:**
5
6 **DIRECT EXAMINATION**
7 **Questions by the assistant trial counsel [CPT MORROW]:**
8 Q. Sir, you are Major General Kenneth McKenzie, U.S. Marine
9 Corps, representative to the Quadrennial Defense Review?
10 A. That's correct.
11 Q. And, sir, where are you currently assigned?
12 A. I'm currently assigned to Headquarters Marine Corps, where
13 I fulfill that responsibility.
14 Q. And, sir, where do you work out of?
15 A. I work out of the Pentagon.
16 Q. And, sir, what is the Quadrennial Defense Review?
17 A. The Quadrennial Defense Review is a congressionally
18 mandated report submitted to the Congress by the Secretary of Defense
19 every 4 years. We are now beginning a serious work to put a QDR
20 together and I -- each of the services provides a flag officer
21 representative. I am the Marine Corps representative. We will work
22 over the next several months to compile the report which looks at the
23 strategy programs of the Department of Defense out of the next 20
years and it will be submitted in Congress in February of 2014.

1 Q. And, sir, how long have you been working on the QDR?

2 A. I came in right about a year ago. When I detached from
3 Central Command, I joined Headquarters Marine Corps in August of last
4 year.

5 Q. And, sir, that actually begs the question. So prior to
6 this assignment you were at Central Command?

7 A. I was the J-5, the Director of Strategy, Plans, and Policy
8 for U.S. Central Command in Tampa, Florida.

9 Q. And, sir, broadly, what were your responsibilities in that
10 position?

11 A. Broadly responsible for the development of the overall
12 strategic campaign plan for the Headquarters, the maintenance of
13 theaters cooperation activities with the nations across the AOR,
14 working with the Department of State and other government entities
15 for the foreign military sales, foreign military financing program.
16 It's a pretty broad portfolio and then on top of that you actually do
17 war planning and other elements of long-term strategic activity.

18 Q. And, sir, are you here to discuss your observations and
19 experience while assigned to the Pentagon -- while assigned to
20 CENTCOM?

21 A. Yes, I am.

1 Q. Sir, I want to talk -- before we get back to your time as a
2 J-5, I want to talk about your career a little bit. How long have
3 you been in the Marine Corps?

4 A. 35 years last May.

5 Q. And without going through all your assignments, sir, can
6 you just give the Court a flavor for your command assignments?

7 A. Sure. As a Lieutenant Colonel I was battalion commander
8 and deployed a battalion to the Mediterranean in 20 -- correction,
9 1998/1999 as part of a Marine Expeditionary Unit. Later as a Marine
10 Expeditionary Unit Commander myself, I deployed a MEU into
11 Afghanistan in 2004, for combat operations in southern Afghanistan
12 and then into Iraq in 2005/2006, also for combat operations.

13 Q. And, sir, what about Headquarters Marine Corps assignments?

14 A. Sure, I had a variety of service assignments at
15 Headquarters Marine Corps. As a younger officer, I was a speech
16 writer for the Commandant, I was the military secretary to the
17 commandant Marine Corps as a Colonel. As a joint officer after being
18 promoted to Brigadier General, I served as the Chairman's
19 representative to the Obama Administration when they came in 2007 --
20 in 2008, as the Chairman's new administration transition team
21 representative where I coordinated the work of the joint staff and
22 the various component commands to bring that administration on board.

1 Q. And, sir, what other -- other than CENTCOM, what other
2 joint assignments have you had if any?

3 A. Sure. In addition to CENTCOM, I also served in Afghanistan
4 in 2009/2010, as Deputy DCOS Stability on the ISAF staff, the
5 headquarters staff in Kabul, Afghanistan.

6 Q. And when you say you DCOS, are you saying Deputy Chief of
7 Staff?

8 A. Deputy to the Deputy Chief of Staff. I worked for an
9 Italian two-star in that responsibility. And that was responsible
10 for economic, governmental development across the whole country of
11 Afghanistan.

12 Q. Sir, can you talk a little bit about your assignments that
13 were focused sort of on strategic planning or future operations?

14 A. Sure. I'm actually a graduate of the School of Advanced
15 War Fighting as a Major, which sort of put me into that -- into that
16 track a little bit. In 1999/2000, I had the opportunity to serve as
17 a CMC fellow at the Institute for National Strategic Studies. Before
18 I worked for then former Deputy Assistant Secretary of Defense
19 Michele Flournoy and we did preparatory work for the Quadrennial
20 Defense Review over an 18-month period, looking broadly at strategy
21 of programs and a number of strategic issues that face the United
22 States. That's probably one of the key formative periods in my
23 career learning to talk and consider strategic issues.

1 Q. Thank you, sir. Sir, let's transition to your time at
2 CENTCOM. Who was the CENTCOM Commander initially when you were the
3 J-5?

4 A. When I initially came in, it was General John Allen for
5 Lieute -- then Lieutenant General John Allen for a period of 30 to 45
6 days and then General Jim Mattis came in and was the CENTCOM
7 Commander for the remainder of my time in Headquarters.

8 Q. I'm sorry, sir, if I've already asked this, but you were at
9 CENTCOM from when to when?

10 A. Sure. I joined in the summer of 2010, and detached in
11 August 2012.

12 Q. And, sir, you said General Mattis took over for General
13 Allen at some point?

14 A. Took over I want to say in early August 2010. It was -- I
15 hadn't been there very long. It may not have even been 30 days. It
16 was a very short period of time before General Mattis came into the
17 Headquarters.

18 Q. And, sir, as part of General Mattis' primary staff, how
19 often did you interact with him?

20 A. I interacted with General Mattis every day and exchanged
21 probably on average, when I didn't see him, dozens of e-mails with
22 him on a broad variety of issues.

1 Q. And what about your interaction with the rest of the staff?
2 Can you describe that please?

3 A. It was particularly Rear Admiral Donegan, the J-3, very
4 close cooperation with him, but also the rest of the staff and also
5 the Component Commanders, those three-star officers from each of the
6 armed services who actually command the combat forces of U.S. Central
7 command. So with very good communications either at Tampa or from
8 the forward headquarters or while traveling I was typically in daily
9 conversation with a broad slice of the staff.

10 Q. And, sir, if you would, just briefly describe how your
11 position differed from the J-3?

12 A. Sure. The J-5 in the U.S. Central Command is responsible
13 for looking at long term. Managing the day to day fight is the
14 responsibility of the J-3. Sending ships to certain places,
15 airplanes to certain places, ensuring troops are moved when
16 necessary. The J-5 is responsible for crafting a larger fabric that
17 puts that into perspective. Where do we want to be 5 years from now,
18 10 years from now in theater and how will that -- then how does that
19 inform the actions of what operations does?

20 Q. And, sir, if you would -- that's sort of the -- at the
21 unclassified level. Can you sort of describe CENTCOM's future
22 planning efforts during the time you were the J-5?

1 A. Sure. The core element of CENTCOM planning as with all
2 U.S. Geographic Combatant Commands is the generation of the theater
3 campaign plan. It's a large document that looks out 5 years
4 formally, but you look even beyond that, but 5 years is the formal
5 window. What you do in that document is you set your priorities.
6 You determine what is important to us and then you begin to look at
7 the tasks you have to accomplish in order to get to that point in 5
8 years and beyond. So that's a key core planning document and then
9 aligned with that, really, is the outreach you do to the other
10 nations and your allied -- your friends and partners across the
11 region, how you bring them in and how they fit into that mosaic.

12 Q. And, sir, when you talk about the theater campaign plan,
13 are you referring to the Iraq and Afghanistan theaters or just
14 generally CENTCOM's entire AOR?

15 A. It is there -- the Iraq and Afghanistan theaters are
16 subordinate theaters within U.S. Central Command, so they were
17 included in that. Although, as you know, uniquely, both of these
18 theaters had four-star commanders. Nonetheless, they were
19 hierarchically subordinate to the CENTCOM Commander.

20 Q. And sir, if you would -- you talked about sort of building
21 military to military relationships as part of CENTCOM's planning
22 efforts. Can you talk about that? How are those relationships
23 built?

1 A. Sure. A lot of my time is taken up with that effort.
2 Typically, I would travel into theater about once a month, sometimes
3 a little more often. Probably over the course of a 24/25 month
4 assignment to CENTCOM I was in theater about that many times.
5 Sometimes for fairly short periods, sometimes for longer periods.
6 What you're trying to do is establish a face-to-face relationship
7 with the lead planner for the nation you're visiting or I could be
8 accompanying the Theater Commander depending on his visit schedule
9 and my visit schedule. What you're trying to do is establish a long-
10 term personal framework that gives you an element of trust for the
11 objectives of the United States across the region.

12 Q. And, sir, when you're talking about your travel, was it
13 primarily to Iraq and Afghanistan, or was it really like all the
14 other CENTCOM?

15 A. Sure. Actually, most of my travel was not to Iraq and
16 Afghanistan. Most of my travel probably, if you looked at it, would
17 be across the Gulf States from Inman and UAE in the east all the way
18 up to Kuwait in the west and up into Jordan. So those states where
19 the majority of the areas that I visited simply because in Iraq and
20 Afghanistan we had large functioning four-star headquarters, they
21 were able to do much of the coordination outreach. So we worked
22 typically through them in our relationship with those nations. The
23 rest, though, we focused my efforts on those.

1 Q. And, sir, why is it in U.S. National Security interest to
2 build these military to military relationships?

3 A. In the long term -- long term collective security is based
4 on deterring potential opponents and reassuring potential -- and
5 reassuring your allies. So it is fundamental to long -- to U.S.
6 long-term strategic interests that we maintain a positive, collegial
7 two-way relationship with these nations.

8 Q. And, sir, were there any countries in particular in CENTCOM
9 that you primarily engaged with as part of your travel?

10 A. Well, the Gulf States are all important. And, you know,
11 depending on the situation, it could change a little bit from time to
12 time. But most of my efforts were focused on the Gulf States, really
13 UAE to Kuwait and a couple of others in there, where we spent the
14 majority of our efforts, although we expended considerable effort in
15 other states across the AOR as well.

16 Q. And so, you said you traveled both alone and with the
17 Commander of CENTCOM?

18 A. That's correct.

19 Q. And, sir, how would you -- generally, in the -- when you
20 initially got to CENTCOM, so summer 2010 up to November of 2010, how
21 would you characterize the military to military relationships we had
22 with the CENTCOM AOR countries?

1 A. I believe they were solid. I think there is always going
2 to be frictions that arise, but I think, in general, we shared a
3 common view. We were building trust. I think it was generally a --
4 on a pretty predictable glide slope within the context of the region
5 which is inherently unstable.

6 Q. And what do you mean by that, sir?

7 A. I mean, you've got actors in the region that have
8 destabilizing intent. You have Iran. You always have to consider
9 the efforts of Iran across the region, their activities both covert
10 and overt that you see out there. So within that context there are
11 always going to be bumps in the relationship. CENTCOM is difficult
12 to predict what is going to happen from day to day simply because of
13 that. But, nonetheless, I felt that we had some very good -- very
14 good way forward.

15 Q. And, sir, when you were meeting with military officials, I
16 assume these were personal meetings with these officials; is that
17 correct?

18 A. Well, they were face-to-face. They were official meetings
19 and then I would be in there. Possibly one of my action officers,
20 maybe the subject matter expert if we were discussing a particularly
21 knotty matter. But there were also personal meetings as well, you
22 know, on a more social venue where you try just to do a little
23 bonding.

1 Q. And, sir, what were -- in general, what were the ranks of
2 these foreign military officials?

3 A. They were typically at least Major Generals, some
4 Lieutenant Generals and sometimes you'd meet with perhaps the Crown
5 Prince or the Chief of Defense. Certainly when I traveled with
6 General Mattis that was the level in which these meetings were
7 conducted.

8 Q. And, sir, do you recall becoming aware of public release of
9 purported State Department information in the November/December 2010
10 time frame?

11 A. Yes, I do.

12 Q. And, sir, as a result of this release, did you observe an
13 impact to CENTCOM's future planning efforts in relationship with
14 foreign partners?

15 A. Yes, I did.

16 ATC[CPT MORROW]: Thank you, sir. Your Honor, at this time we'd
17 move to a closed session.

18 MJ: All right. Before we do that, is there any reason -- first
19 of all, defense, do you have an open cross-examination?

20 ADC[MAJ HURLEY]: No, ma'am, I do not.

21 MJ: All right. Is there anything else that we will need to
22 address today in an open session?

23 TC[MAJ FEIN]: No, Your Honor.

1 ADC[MAJ HURLEY]: No, ma'am.

2 MJ: So after today, the next open session is going to be on

3 Monday, right?

4 ATC[CPT MORROW]: That's correct, Your Honor.

5 MJ: And what time do the parties want to start?

6 CDC[MR. COOMBS]: 0930 is fine with the defense. I believe the

7 government, if they're not calling Special Agent -- excuse me,

8 Special Agent Mander, are you calling him?

9 TC[MAJ FEIN]: We are not, Your Honor.

10 MJ: Are you calling anyone else?

11 TC[MAJ FEIN]: No, ma'am. General McKenzie is the last

12 government witness for sentencing.

13 MJ: So we'll be starting with the defense case after we have --

14 litigate the two motions at issue that we've discussed, the judicial

15 notice as well as the R.C.M. 706 issue?

16 TC[MAJ FEIN]: Yes, ma'am.

17 ADC[MAJ HURLEY]: Yes, ma'am. So if we could start at 0930 with

18 the motions arguments and then we'll go into the first witness.

19 MJ: All right. That sounds like a good idea. All right. For

20 members of the public and members of the gallery, this is the end for

21 the open sessions for today. We will go into the closed session and

22 then that will be followed by a recess until Monday morning at 0930

23 where we will be litigating the two issues I just described. The

1 parties will have their filings noted on the record. The parties
2 will have oral argument with respect to those issues and then
3 following that, we will begin with the defense's sentencing case. Is
4 there anything else we need to address before I recess the court from
5 the open session?

6 TC[MAJ FEIN]: Your Honor, this court closure also pursuant your
7 previous order, it's Appellate Exhibit 550. And ---

8 MJ: Okay.

9 TC[MAJ FEIN]: ---- there's no other issues, ma'am, ----

10 MJ: Thank you very much.

11 TC[MAJ FEIN]: ---- from the government.

12 MJ: Major General McKenzie, during the recess please don't
13 discuss your testimony with anyone. All right, court is in recess.

14 [The court-martial recessed at 1517, 9 August 2013.]

15 [END OF PAGE]

Pages 12487 through 12517 of this transcript are classified "SECRET". This session (9 August 2013, Session 2) is sealed for Reasons 2 and 3, Military Judge's Seal Order dated 17 January 2014 and stored in the classified supplement to the Record of Trial.

Pursuant to AE 550, the unclassified and redacted version follows.

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4 [The court-martial was called to order at 1535, 9 August 2013.]

5 MJ: Court is called to order. Let the record reflect all
6 parties present when the court last recessed are again present in
7 court. The witness is on the witness chair. Major Fein?

8 TC[MAJ FEIN]: Yes, ma'am. Your Honor, this is a closed
9 session, classified at the Secret level. The court security officer
10 has completed his closed hearing checklist. It will be filed with
11 the post-trial allied papers. In addition to the parties and the
12 Court and the witness, in the courtroom is the bailiff, the Court's
13 paralegal, the members of the prosecution team, members of the
14 defense team, and security.

15 MJ: All right. Captain Morrow?

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1 [Examination of MG McKenzie continued.]

2 Questions by the assistant trial counsel [CPT MORROW]:

3 Q. Sir, I'd like to start with the relationship aspect of
4 impact, first.

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7 A.

8 Q. Yes, please, sir.

9 A.

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16 ADC[MAJ HURLEY]: Pardon me, sir----

17 MJ: Yes?

18 ADC[MAJ HURLEY]: Objection, ma'am, hearsay.

19 MJ: Were you present during these-----

20 WIT: Yes, I was.

21 MJ: Overruled.

22 [Examination of the witness continued.]

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1 Q. Go on, sir.

2 A.

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11 Q. And, sir, if we could just sort of bracket down the time
12 frame of this--would you--when did this first become an issue in
13 meetings with--either that you were personally involved with or that
14 you were an officer----

15 A.

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19 Q. Sir, I want to transition to some of CENTCOM's planning
20 efforts. We talked about, sort of, in general, planning efforts in
21 the open session. But, at the Secret level, can you describe, in

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1 greater detail, the focus of CENTCOM's planning efforts when you were
2 the J-5?

3 A.

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10 Q. And, sir,

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12 A. Yes, they were.

13 Q. And, sir, what happened to the status

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15 A.

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20 Q.

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1 MJ:

2 ADC[MAJ HURLEY]:

3 MJ:

4 [Examination of the witness continued.]

5 Q.

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1 MJ:
2 ADC[MAJ HURLEY]:
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12 ADC[MAJ HURLEY]: Captain Morrow--I'm sorry, ma'am, with the
13 first part of the general's answer, the--
14 the sausage-making part of it,
15 1001(b)(4).
16 MJ: All right. Noted.
17 [Examination of the witness continued.]
18 Q. Sir, I want to shift, for a moment, for--to a sort of
19 different subject. Did you personally observe or
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ADC[MAJ HURLEY]:

MJ:

[Examination of the witness continued.]

Q. And, sir, overall, how would you characterize the impact of

A.

ATC[CPT MORROW]: Thank you, sir. No further questions.

MJ: Cross examination?

ADC[MAJ HURLEY]: Yes, ma'am.

CROSS-EXAMINATION

Questions by the assistant defense counsel [MAJ HURLEY]:

Q. Good afternoon, sir.

A. [No response.]

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1 Q. Sir, let's pick up--or let's start, here. In a previous
2 interview, you indicated to me that your work,

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4 A. That's correct.

5 Q. So, sir, obviously we're operating at Secret/NOFORN levels
6 so if I ask you a question that requires a higher classification,
7 just please let us know.

8 A. Sure.

9 Q. So let's start with the
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11 A.

12 Q.

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14 A.

15 Q.

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17 A.

18 Q.

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20 A.

21 Q.

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1 Q.

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3 A.

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6 A.

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9 A.

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11 Q. And, as you indicated to Captain Morrow in the direct
12 examination,

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14 A. It was common knowledge.

15 Q. Even before WikiLeaks.

16 A. That's my judgment, yes.

17 Q.

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20 A. Yes, you're correct.

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1 Q. And that insight, based on our conversations before, sir--

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4 A. That's correct.

5 Q. Speaking of that, the CENTCOM AOR has--is an AOR with many
6 different cultures, correct?

7 A. Yes.

8 Q. And many of those cultures--or one aspect of all of those

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11 A. That's correct.

12 Q.

13 A.

14 Q. Yes, sir. And that was--what WikiLeaks gave them was,

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16 A.

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19 Q.

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22 A.

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1 Q. And that--in line with that, a variety of factors weigh in
2 on any one situation or decision? It's not--there's not just a
3 direct cause and effect that really comes from anything in CENTCOM?

4 A. You're right--you are correct.

5 Q.

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7 A. That's correct, yes.

8 Q. And, sir, you indicated that a variety of factors, not just
9 WikiLeaks, contributed to

10 A. That's correct.

11 Q. And it's your understanding, by your own experience, that

12 Like that----

13 A.

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15 Q. But, I guess, as a general notion, sir,

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17 A. Oh, there are--

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1 Q. Well, sir, let's talk about those other factors. And let's
2 focus, first,

3 A. Sure.

4 Q. And, sir, that was one of the countries that was affected--
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6 A. That's correct.

7 Q.

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9 A.

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13 Q. But you were able to, as you indicated----

14 A. We--I--we finally

15 Q. And with respect to

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17 A.

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1 Q.

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22 Q.

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1 A.

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11 Q.

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15 A.

16 Q.

17 A.

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INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1984, Appendix 14, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force uses this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized.

Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

COPIES - See MCM, 1984, RCM 1103(g). The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or for judge advocate review pursuant to Article 64(a), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 6, 7, and 15e will be inserted by the convening or reviewing authority, as appropriate, and items 10 and 14 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover (chronology sheet) of DD Form 490.

2. Judge advocate's review pursuant to Article 64(a), if any.

3. Request of accused for appellate defense counsel, or waiver/withdrawal of appellate rights, if applicable.

4. Briefs of counsel submitted after trial, if any (Article 38(c)).

5. DD Form 494, "Court-Martial Data Sheet."

6. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

7. When required, signed recommendation of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

8. Matters submitted by the accused pursuant to Article 60 (MCM, 1984, RCM 1105).

9. DD Form 458, "Charge Sheet" (unless included at the point of arraignment in the record).

10. Congressional inquiries and replies, if any.

11. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

12. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

13. Requests by counsel and action of the convening authority taken thereon (e.g., requests concerning delay, witnesses and depositions).

14. Records of former trials.

15. Record of trial in the following order:

a. Errata sheet, if any.

b. Index sheet with reverse side containing receipt of accused or defense counsel for copy of record or certificate in lieu of receipt.

c. Record of proceedings in court, including Article 39(a) sessions, if any.

d. Authentication sheet, followed by certificate of correction, if any.

e. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

f. Exhibits admitted in evidence.

g. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

h. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.